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**Transcript Exhibit(s)**

Docket #(s): T-01051B-10-0194

T-02811B-10-0194

T-03555A-10-0194

T-03902A-10-0194

T-04190A-10-0194

T-20443A-10-0194

Exhibit #: DoD/FEA1-4, 4 Revised, DoD/FEA5, DoD/FEA Joint 1,  
I1, JAI, JA2, Level 3(1-2), PAETEC1-2,  
PW1-2.


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To: Docket Control

Date: December 28, 2010

Re: Qwest Corporation, et al. / Merger  
T-01051B-10-0194, et al.  
Volumes I through III  
Volume I, taken on December 13, 2010;  
Volume II, taken on December 20, 2010; and  
Volume III, taken on December 21, 2010

### STATUS OF ORIGINAL EXHIBITS

#### *FILED WITH DOCKET CONTROL*

##### CenturyLink

Exhibit Designation: CTL  
1 through 9

##### Cox

Exhibit Designation: Cox  
1 and 2

##### Department of Defense & Federal Executive Agencies

Exhibit Designation: DoD/FEA  
1 through 4, 4 revised, and 5  
Joint 1

Integra

Exhibit Designation: I  
1

Joint Applicants

Exhibit Designation: JA  
1 and 2

Level 3

Exhibit Designation: Level 3  
1 and 2

PAETEC

Exhibit Designation: PAETEC  
1 and 2

Pac-West

Exhibit Designation: PW  
1 and 2

PAETEC, Level 3, and TW Telecom

Exhibit Designation: PLT  
1 through 6

Qwest

Exhibit Designation: Q  
1 through 10

RUCO

Exhibit Designation: RUCO  
1 through 3

Staff

Exhibit Designation: S  
1 through 4, and 6 through 9

***CONFIDENTIAL EXHIBITS***  
***Remitted to Belinda Martin, ALJ***

CenturyLink

Exhibit Designation: CTL  
10 CF

Cox

Exhibit Designation: Cox  
1 CF

PAETEC

Exhibit Designation: PAETEC  
1 CF

PAETEC, Level 3, and TW Telecom

Exhibit Designation: PLT  
1 CF and 2 CF

Qwest

Exhibit Designation: Q  
7 CF

Staff

Exhibit Designation: S  
5 CF



Copy to:

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Mr. Craig A. Marks, Integra Telecom  
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BEFORE THE ARIZONA CORPORATION COMMISSION

**COMMISSIONERS**

KRISTIN K. MAYES - Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP

IN THE MATTER OF THE JOINT  
APPLICATION OF QWEST  
CORPORATION, QWEST  
COMMUNICATIONS COMPANY, LLC,  
QWEST LD CORP. dba QWEST LONG  
DISTANCE, EMBARQ PAYPHONE  
SERVICES, INC. AND CENTURYTEL  
SOLUTIONS, LLC FOR APPROVAL OF  
THE PROPOSED MERGER OF THEIR  
PARENT CORPORATIONS QWEST  
COMMUNICATIONS INTERNATIONAL  
INC. AND CENTURYTEL, INC.

DOCKET NO. T-01051B-10-0194  
T-02811B-10-0194  
T-04190A-10-0194  
T-20443A-10-0194  
T-03555A-10-0194  
T-03902A-10-0194

THE UNITED STATES DEPARTMENT  
OF DEFENSE AND ALL OTHER  
FEDERAL EXECUTIVE AGENCIES'  
INITIAL TESTIMONY

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INITIAL TESTIMONY

of

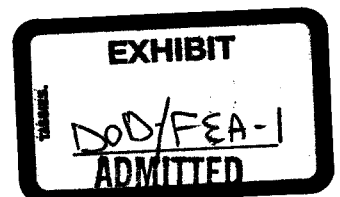
CHARLES W. KING

On Behalf of  
THE DEPARTMENT OF DEFENSE  
And

ALL OTHER FEDERAL EXECUTIVE AGENCIES

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September 27, 2010



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Attachment B.....	Appearances of Charles W. King before Regulatory Agencies
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DoD/FEA Exhibit 3.....	Excerpts from CENTURYTEL INC's SEC Form 10-Q, filed August 6, 2010, pages: Cover, Title, 27-39
DoD/FEA Exhibit 4.....	Qwest and CenturyLink FCC ARMIS Service Quality Reports for 2009

**INITIAL TESTIMONY OF  
CHARLES W. KING**

**QUALIFICATIONS**

**Q. PLEASE STATE YOUR NAME, POSITION AND BUSINESS ADDRESS.**

A. My name is Charles W. King. I am President of the economic consulting firm of Snavely King Majoros & O'Connor, Inc. ("Snavely King"). My business address is 1111 14<sup>th</sup> Street, N.W., Suite 300, Washington, D.C. 20005.

**Q. PLEASE DESCRIBE SNAVELY KING.**

A. Snavely King, formerly Snavely, King & Associates, Inc., was founded by the late Carl M. Snavely and myself in 1970 to conduct research on a consulting basis into the rates, revenues, costs and economic performance of regulated firms and industries. The firm has a professional staff of 12 economists, accountants, engineers and cost analysts. Most of its work involves the development, preparation and presentation of expert witness testimony before federal and state regulatory agencies. Over the course of its 40-year history, members of the firm have participated in over 1000 proceedings before almost all of the state commissions and all Federal commissions that regulate telecommunications, utilities or transportation industries.

**Q. HAVE YOU PREPARED A SUMMARY OF YOUR QUALIFICATIONS AND EXPERIENCE?**

A. Yes. Attachment A is a summary of my qualifications and experience.

**Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY IN REGULATORY PROCEEDINGS?**

A. Yes. Attachment B is a tabulation of my appearances as an expert witness before state and federal regulatory agencies. It shows that I have testified before the public utility commissions of over 40 states, including Arizona, and I have

1 appeared before all federal agencies that regulate telecommunications, utilities,  
2 transportation and postal services.

3 **Q. FOR WHOM ARE YOU APPEARING IN THIS PROCEEDING?**

4 I am appearing on behalf of the consumer interests of the Department of Defense  
5 ("DoD") and all other Federal Executive Agencies ("FEA") in Arizona.

6  
7 **INTERESTS OF DoD/FEA**

8  
9 **Q. WHY HAS DoD/FEA INTERVENED IN THIS CASE?**

10  
11 A. The Department of Defense and all other Federal Executive Agencies have a  
12 substantial presence in the State of Arizona. Several major military installations  
13 are located in Arizona, including Fort Huachuca, Davis-Monthan Air Force Base,  
14 Yuma Proving Ground and Luke Air Force Base. In addition, the Federal  
15 presence also exists in major facilities such as the Department of Veterans Affairs  
16 Medical Centers in Phoenix and Tucson, and Federal Buildings and Courthouses  
17 in Phoenix and Tucson. Moreover, in the affected service area there are  
18 numerous and widespread small-business sized offices such as Armed Forces  
19 recruiters, Post Offices, Social Security offices, as well as offices housing Fish  
20 and Wildlife Service, National Parks, USDA Forest Service and Farm  
21 Service/Agricultural employees and agents. Federal employment (Civilian and  
22 Active Duty Military) in Arizona exceeds 60,000 persons.

23  
24 This very substantial presence makes DoD/FEA one of the largest users of  
25 telecommunications services in the state of Arizona.<sup>1</sup> It is important to DoD/FEA  
26 that services in the affected exchanges are provided in an efficient manner, at  
27 reasonable cost, and with the highest service quality and performance. DoD/FEA

---

<sup>1</sup> Although in aggregate DoD/FEA is one of the largest users, it obtains a broad variety of services. Individual customer locations cover a wide range of sizes, employing the full panoply of telecommunications services from single-line business service to complex, multimodal and specially designed networks.

1 is concerned that any change in Qwest's corporate governance be seamless and  
2 not degrade retail services, and that CenturyLink be willing and able to offer  
3 state-of-the-art retail business services of the nature that DoD/FEA operations  
4 require.

5  
6 Moreover, the DoD/FEA interest goes beyond the locations directly affected by  
7 the transition. Where possible, DoD and FEA telecommunications services are  
8 procured under contract through competitive bidding. The effectiveness of the  
9 competitive procurement process is, of course, dependent upon there being a  
10 number of financially strong and technically capable entities that can submit bids.  
11 If the proposed transfer is approved, it is important to DoD/FEA that  
12 CenturyLink's competitors have the opportunity to access Federal installations on  
13 a fair and reasonable basis through CenturyLink facilities and that CenturyLink be  
14 able to render service to Federal locations even outside of its service territories.  
15 Moreover, CenturyLink itself must be a sophisticated competitive bidder capable  
16 of providing the full range of telecommunications services at reasonable costs to  
17 the Federal government.

18  
19 The merged company will also be a wholesale provider of services and facilities  
20 to competitive retail telecommunications providers. The service quality  
21 performance, the practices, and the operations of that company must support fair  
22 and effective competition among carriers in providing services to business  
23 customers and the general public in Arizona.

24  
25 Unfortunately, the record of recent telecommunications acquisitions has not been  
26 encouraging.

**PREVIOUS TELECOMMUNICATIONS ACQUISITIONS**

**Q. WHAT PREVIOUS TELECOMMUNICATIONS ACQUISITIONS ARE YOU REFERRING TO?**

A. I am referring to the three recent major Verizon landline spin-offs to acquiring companies. The first was the acquisition of Verizon's Hawaiian landline assets by The Carlyle Group ("Carlyle"). The second was the purchase of Verizon's northern New England wireline operations by FairPoint Communications ("FairPoint"). The third and most recent was the acquisition of Verizon's non-metropolitan operations in 14 states by Frontier Communications.

**Q. PLEASE DESCRIBE THE HAWAIIAN TELEPHONE TRANSACTION.**

A. The Hawaiian transaction provides a case study of the difficulties that ill-advised telephone company acquisitions can lead to. It was unsuccessful in almost all respects, resulting in severe service degradation to Hawaiians and in the financial failure of the successor company.

In 2004, Verizon sought approval to sell its Hawaiian assets to Carlyle, a private equity enterprise. Carlyle created a new entity, Hawaiian Telcom, Inc. ("HT"), to provide the local exchange services previously offered by Hawaiian Telephone. The applicants in that case stated that after the transition HT "will have the financial fitness and ability to fund the continuing operations of Verizon Hawaii through the revenue generated from the existing and proposed operations."<sup>2</sup> Likewise, the applicants stated that they "... acknowledge the importance of ensuring a seamless transition for customers and have conducted a rigorous process to select a world-class systems integrator to replicate the full functionality of the systems currently provided by Verizon."<sup>3</sup> In 2005, the Hawaii Public

---

<sup>2</sup> Application, Docket No. 04-0140, June 21, 2004, pp. 13-14.

<sup>3</sup> *Id.*, p. 15.

1 Utilities Commission ("HPUC") approved the transfer subject to numerous  
2 conditions.<sup>4</sup>

3  
4 In its decision approving the sale, the HPUC stated that it would initiate an  
5 investigation of HT's service quality approximately six months after HT assumed  
6 the back-office operations that Verizon previously provided on a national basis to  
7 all of its service territories, including Hawaii. This service quality proceeding,  
8 HPUC Docket No. 2006-0400, confirmed that the transition from Verizon was far  
9 from seamless or harmless to customers. Although the HPUC has not yet  
10 rendered a decision in that proceeding, it is undisputed that for more than a year  
11 following the cutover from Verizon's back-office operations, HT was unable to  
12 collect data – even manually – as to six service standards for which the HPUC  
13 required reports.<sup>5</sup> Thus, the full extent of the problems associated with the  
14 transfer could not even be quantified.

15  
16 As to the seven service standards for which HT was able to file reports, five dealt  
17 with call answering time. HT's ability to answer calls was lacking compared to  
18 the experience under Verizon. For example, during the nine months following the  
19 cut-over, HT's percent of residential installation and billing office calls answered  
20 in 20 seconds ranged from a low of 8.01 percent to a high of 70.37 percent,  
21 compared to the objective of 85 percent and Verizon's 2005 percentage of 87.46  
22 percent. Likewise, the answering time achieved for business installation and  
23 billing office calls following the cut-over ranged from 12.83 percent to 78.82  
24 percent compared with the objective of 85 percent and Verizon's achieved rate of  
25 88.23 percent.<sup>6</sup> In an effort to repair the damage caused by the non-functioning  
26 systems, HT had to replace the contractor working on the transition.<sup>7</sup>

27  

---

<sup>4</sup> Docket No. 04-0140, Decision and Order No. 21696, March 16, 2005.

<sup>5</sup> HT's Post-Hearing Brief, HPUC Docket No. 2006-0400, filed November 9, 2007 at p. 118, fn. 101. The missing reports included crucial data such as the percent of trouble reports cleared within 24 hours, the percent of installation and repair commitments met and customer trouble reports per 100 lines.

<sup>6</sup> HT's February 15, 2007 Statement of Position, HPUC Docket No 2006-0400, pp. 39-41.

<sup>7</sup> *Id.*, pp. 74-77.



1 HT admitted in its pleadings that service suffered as a result of the transition from  
2 Verizon and that it created erroneous bills and was unable to handle adequately  
3 incoming calls.<sup>8</sup> HT candidly admitted that "... the cutover did unfortunately  
4 create some negative impacts on its customers."<sup>9</sup> Finally, HT agreed with the  
5 assessment of the Consumer Advocate that its "... retail customers following  
6 cutover experienced long waiting times to reach [its] contact center, extremely  
7 slow and long transaction processing times, high levels of fall out, long waiting  
8 times to repair, missed or delayed installation and repair commitments and billing  
9 errors."<sup>10</sup>

10  
11 The cutover from Verizon's back-office operations also caused significant  
12 problems for HT's wholesale customers. One Competitive Local Exchange  
13 Carrier ("CLEC"), Time Warner Telecom of Hawaii, L.P. ("TWTC"),  
14 summarized the problems as follows:

15 HT's conversion to its new back office systems was a failure by  
16 any measure. Immediately following cutover, virtually none of the  
17 wholesale back office systems were functioning. Today, 19  
18 months after cutover, they are still not functioning at the same  
19 level as the Verizon systems. Although HT has made significant  
20 progress in addressing its issues, those efforts are not complete.

21  
22 HT violated the Merger Decision and the Stipulation by failing to  
23 provide the same or similar functionality for wholesale service as  
24 previously provided by Verizon, and by failing to remain on the  
25 Verizon systems until HT's new systems were fully tested and  
26 operational. These violations significantly harmed TWTC and  
27 HT's other customers.<sup>11</sup>

28  
29 In summary, the applicants in the Hawaii sale promised a seamless transition to  
30 HT's back-office systems, but the record in that case – including HT's own

---

<sup>8</sup> *Id.*, pp. 53-57.

<sup>9</sup> HT's August 31, 2007 Final Position Statement, HPUC Docket No. 2006-0400, p. 21.

<sup>10</sup> *Id.*, p. 7.

<sup>11</sup> Time Warner Telecom of Hawaii, L.P., dba Oceanic Communications' Post-hearing Brief, HPUC Docket No. 2006-0400, November 9, 2007, p. 2 (footnote omitted). The text of the brief contains a detailed description of HT's numerous failures in connection with providing wholesale service after acquiring the Verizon exchanges, and the adverse impact that the failures had on Time Warner and its customers. Another CLEC, Pacific LightNet, Inc., filed a Post-hearing Brief asserting that the flawed transfer of operations caused it to incur additional expense to resolve interconnection problems and billing errors.

1 pleadings -- shows that both wholesale and retail customers suffered significantly  
2 from the failure of automated systems, dropped calls, long call answering and  
3 holding times, billing errors and costly manual efforts to correct the deficiencies.  
4 HT was not able to track repair and installation times, so that data for these  
5 critical service quality metrics could not even be assessed in determining the  
6 adverse effects of the transition to HT's systems.

7  
8 On December 1, 2008, HT filed for Chapter 11 bankruptcy protection.<sup>12</sup> The  
9 public explanation for the bankruptcy was the impending inability to refinance its  
10 debt, but the costs and lost customers resulting from HT's poor service quality  
11 probably contributed to the Company's inability to service its debt.

12  
13 **Q. PLEASE DESCRIBE VERIZON'S SALE OF NEW ENGLAND**  
14 **OPERATIONS TO FAIRPOINT.**

15  
16 **A** At the beginning of 2007, FairPoint was an incumbent local exchange  
17 telecommunications company with about 330,000 access lines. In that year,  
18 Verizon New England, Inc., FairPoint, and affiliated firms announced a planned  
19 \$2.4 billion transaction, similar in some respects to that proposed in Arizona (but  
20 smaller in size), under which FairPoint would obtain Verizon's landline  
21 businesses in Maine, New Hampshire and Vermont.

22  
23 The proposed transaction was controversial and the implementation of the sale  
24 was seriously flawed. In Vermont, for example, the Public Service Board initially  
25 denied the application. The petitioners submitted a revised proposal in which  
26 they improved the transaction from the standpoint of ratepayers in several ways.  
27 The revised proposal bettered FairPoint's financial standing after the acquisition  
28 by substantially reducing the initial debt and decreasing dividends. In addition,  
29 the proposal was revised to include a Performance Enhancement Plan, which was

---

<sup>12</sup> See Hawaiian Telcom Communications, Inc., Securities and Exchange Commission Form 8-K filed December 1, 2008, and HT's December 1, 2008 Press Release contained in that filing.

1 designed to prompt more investment and improve service quality by mandating  
2 that FairPoint set aside funds if it failed to meet certain specified service  
3 standards. Also, FairPoint agreed to an independent monitor of the transition  
4 from Verizon's systems to its own, with the objective of making the transition  
5 more seamless and further safeguarding consumers.<sup>13</sup>

6  
7 The Vermont Public Service Board approved the transfer with additional  
8 conditions on February 15, 2008.<sup>14</sup> Following the transaction, there began a  
9 series of "cutover" problems that are still not fully resolved. Indeed, service  
10 deteriorated to the extent that the Board called for an investigation into whether  
11 the Company should be allowed to continue its operations in the state if it cannot  
12 overcome its customer service, billing and operational problems.<sup>15</sup>

13 On October 26, 2009, FairPoint announced that it had filed for Chapter 11  
14 bankruptcy protection.<sup>16</sup>

15 **Q. HAVE THERE BEEN SERVICE PROBLEMS WITH THE SALE OF**  
16 **VERIZON'S EXCHANGES TO FRONTIER COMMUNICATIONS?**

17 A. On May 13, 2009, Frontier Communications and Verizon entered into an  
18 Agreement and Plan of Merger (the "Merger Agreement") under which Frontier,  
19 through the acquisition of stock, would acquire approximately 4.8 million access  
20 lines owned by subsidiaries of Verizon in Arizona, Idaho, Illinois, Indiana,  
21 Michigan, Nevada, North Carolina, Ohio, Oregon, South Carolina, Washington,  
22 Wisconsin and West Virginia as well as a small number of access lines in  
23 California bordering Arizona, Nevada and Oregon. The sale was consummated in  
24 the spring of 2010 and is so recent that it cannot yet be determined whether this

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<sup>13</sup> Vermont Public Service Board Docket No. 7270, Order entered February 15, 2008.

<sup>14</sup> *Id.*

<sup>15</sup> Vermont Docket No. 7270 Information Page at <http://www.state.vt.us/psb/document/>. This testimony has focused on Vermont, but the problems exist in the other states as well. For example, on July 29, 2009, the *Bangor Daily News* reported that the Maine Public Utilities Commission refused to waive the financial penalties that FairPoint had incurred for poor service performance.

<sup>16</sup> FairPoint Form 8-K, filed with the Securities and Exchange Commission, October 26, 2009.

1 transition will be more successful than the two previous transactions, but there are  
2 already disturbing indications.

3 On July 21, 2010, FiberNet, a competitive local exchange carrier, filed a Petition  
4 to Reopen the Frontier/Verizon authorization proceeding in West Virginia.  
5 FiberNet cited a number of problems it allegedly experienced when attempting to  
6 order wholesale services through Frontier's operational support systems (OSS).  
7 FiberNet asserted that the various problems have created delays in providing  
8 service to FiberNet customers and increased costs for FiberNet. FiberNet  
9 requested that the Commission reopen this matter and direct Frontier to provide  
10 an OSS that is functionally equivalent to the system previously provided by  
11 Verizon. The West Virginia Public Service Commission has established a  
12 complaint proceeding to deal with FiberNet's alleged problems.<sup>17</sup> DoD/FEA  
13 Exhibit 2 is a copy of the Commission's Order. It remains to be seen whether the  
14 difficulties experienced by FiberNet are discrete to that company or are part of a  
15 wider deterioration in service.

16 Additionally, it appears that the very favorable cost-benefit ratios claimed by  
17 Frontier may have begun to unravel. Frontier and Verizon had stated that Frontier  
18 expected the fully implemented transaction would yield annual operating expense  
19 savings of \$500 million.<sup>18</sup> Recently, however, Frontier revealed a significant  
20 increase in systems integration costs that cuts into the previously heralded  
21 savings:

22 While we anticipate that certain expenses will be incurred, such  
23 expenses are difficult to estimate accurately, and may exceed  
24 current estimates. For example, our estimate of expected 2010  
25 capital expenditures related to integration activities has recently  
26 increased from \$75 million to \$180 million, attributable in large  
27 part to costs to be incurred in connection with third-party software  
28 licenses necessary to operate the Spinco business after the closing

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<sup>17</sup> West Virginia PSC Order of August 16, 2010 in Case No. 09-0871-T-PC.

<sup>18</sup> Verizon Communications Inc. and Frontier Communications Corp. Application to the Federal Communications Commission, *Consolidated Application for Transfer of Control and Assignment of International and Domestic Section 214 Authority*, May 28, 2009, Exhibit 1 (Description of the Transaction and Public Interest Statement), p. 3.

1 of the merger. Accordingly, the benefits from the merger may be  
2 offset by costs incurred or delays in integrating the companies.<sup>19</sup>  
3

4 **Q. WHAT IS THE LESSON FROM THESE PREVIOUS ACQUISITIONS?**

5 A. All of these transactions were described as seamless and of no harm to consumers,  
6 much as this transaction in Arizona has been described by CenturyLink and  
7 Qwest. Events proved otherwise in each case. In view of this history, this  
8 Commission must view with great suspicion the Applicants' statements that there  
9 will be no impact on customers from the transfer. Indeed, CenturyLink itself  
10 acknowledges the very substantial risks associated with this merger. The  
11 following is an excerpt is from CenturyLink's second quarter 2010 SEC Form  
12 10-Q.  
13

14 We expect to incur substantial expenses in connection with  
15 completing the Qwest merger and integrating Qwest's business,  
16 operations, networks, systems, technologies, policies and  
17 procedures of Qwest with ours. There are a large number of  
18 systems that must be integrated, including billing, management  
19 information, purchasing, accounting and finance, sales, payroll and  
20 benefits, fixed asset, lease administration and regulatory  
21 compliance. While we have assumed that a certain level of  
22 transaction and integration expenses would be incurred, there are a  
23 number of factors beyond our control that could affect the total  
24 amount or the timing of our integration expenses. Many of the  
25 expenses that will be incurred, by their nature, are difficult to  
26 estimate accurately at the present time. Moreover, we expect to  
27 commence these integration initiatives before we have completed a  
28 similar integration of our business with the business of Embarq,  
29 acquired in 2009, which could cause both of these integration  
30 initiatives to be delayed or rendered more costly or disruptive than  
31 would otherwise be the case. Due to these factors, the transaction  
32 and integration expenses associated with the Qwest merger could,  
33 particularly in the near term, exceed the savings that we expect to  
34 achieve from the elimination of duplicative expenses and the  
35 realization of economies of scale and cost savings related to the  
36 integration of the businesses following the completion of the  
37 merger. As a result of these expenses, we expect to take charges  
38 against our earnings before and after the completion of the merger.

---

<sup>19</sup> Frontier Communications, Inc., Form 10-Q, filed May 16, 2010, p. 56.

1 The charges taken after the merger are expected to be significant,  
2 although the aggregate amount and timing of such charges are  
3 uncertain at present. Following the Qwest merger, the combined  
4 company may be unable to integrate successfully our business and  
5 Qwest's business and realize the anticipated benefits of the  
6 merger.<sup>20</sup>  
7

8 I have attached the full Form 10-Q discussion of merger risks as DoD/FEA  
9 Exhibit 3.  
10

11 I therefore believe it is important that this Commission establish safeguards to  
12 ensure that the difficulties that arose in these previous transactions will not be  
13 repeated in Arizona.  
14

15 **ASSESSMENT OF THE TRANSACTION**  
16

17 **Q. DO YOU OPPOSE THIS TRANSACTION?**  
18

19 A. Not necessarily. Although I have some reservations which I will discuss, there are  
20 a number of features of this transaction that are more promising than those of the  
21 previous acquisitions. CenturyLink is a much larger, more experienced and  
22 financially healthier company than the Carlyle Group, FairPoint or Frontier.  
23 Unlike the previous acquisitions, this transaction is a stock transfer that involves  
24 no new debt. So far, the record of CenturyLink's acquisitions has been relatively  
25 trouble-free. The combined company will display a much stronger balance sheet  
26 relative to that of Qwest at the present time. With appropriate conditions, I believe  
27 the merger may be in the public interest.  
28

29 **Q. WHAT, THEN, IS YOUR CONCERN IN THIS PROCEEDING?**  
30

31 A. I am concerned that the transition from Qwest to CenturyLink be as seamless as  
32 possible and that there be no rate increases, disruptions, or other service quality

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<sup>20</sup> CENTURYTEL INC, Form 10-Q, filed August 6, 2010, p. 32. See DoD/FEA Exhibit 3.

1 losses arising from this transaction. In this testimony, I recommend several  
2 conditions that should be imposed on the merged company as part of the approval  
3 of the transaction.

4  
5 These conditions relate to two principal areas of concern to DoD/FEA. The first  
6 is the financial stress than may be imposed on the merged company's Arizona  
7 operations. The second is the maintenance of adequate service quality in the  
8 Arizona exchanges.

9  
10 **FINANCIAL STRESS ON ARIZONA OPERATIONS**

11  
12 **Q. WHY ARE YOU CONCERNED ABOUT THE FINANCIAL HEALTH OF**  
13 **THE ARIZONA OPERATIONS?**

14  
15 A. CenturyLink asserts that the merger of its company with Qwest will generate  
16 annual synergies of \$625 million.<sup>21</sup> These synergies are expected to take the form  
17 of reduced corporate overheads, network and operational efficiencies, IT support,  
18 increased purchasing power, and the combining of the two companies' advertising  
19 and marketing programs. As the foregoing excerpt from CenturyLink's Form 10-  
20 Q concedes, these synergies are difficult to forecast with precision, and they may  
21 not develop as expected.

22  
23 How many of these synergies will accrue to Arizona is open to question.  
24 Certainly, there will be no synergies from combining operations in Arizona  
25 because CenturyLink currently has no presence in the state. The Application is  
26 emphatic that Qwest will continue to operate exactly as it does now, so that  
27 subscribers will see no difference in the services following the transaction relative  
28 to the present. If so, then the greatest benefits of the synergies will be found  
29 elsewhere, presumably in those states where both CenturyLink and Qwest  
30 operate.

---

<sup>21</sup> Direct Testimony of Jeff Glover, p.13.

1  
2 Whatever the synergies, they come at a substantial cost. The Applicants estimate  
3 that there will be one-time operating costs of \$650 to \$850 million to achieve the  
4 planned synergies nationwide. On top of that an additional \$150 to \$200 million  
5 in capital costs will be required.<sup>22</sup> These costs are estimates, and the Company  
6 concedes that they could be exceeded, as has happened in all three of the  
7 acquisitions discussed earlier in this testimony. Moreover, these costs will be  
8 incurred before the benefits of the synergies are felt, so that they represent a net  
9 new requirement for funds. Left unstated is where the money for these transition  
10 costs will come from.

11  
12 It is possible that some of the money might come from new bond and stock issues,  
13 but there are downsides to these sources of funds. At present, CenturyLink is  
14 rated by S&P just above the critical BBB- rating that qualifies its bonds for  
15 "investment grade", meaning that fiduciary funds, such as pension and insurance  
16 funds, can buy the bonds. Qwest is rated just below that threshold. The combined  
17 company will thus be on the cusp of investment grade bond ratings. Any  
18 substantial increase in debt would push the company below that important  
19 threshold, eliminating a portion of its potential bond market and possibly  
20 increasing its interest costs.<sup>23</sup> Additional stock sales would dilute the value of the  
21 existing shares, depriving the stockholders of the full promised benefits of the  
22 merger. It is therefore likely that the Company will avoid these financing sources  
23 if it can find the needed funds elsewhere.

24  
25 An important source of funds elsewhere will be the company's customers, and  
26 that is the source of my concern. As an alternative to bond or stock sales,  
27 CenturyLink may look to its local operations, including those in Arizona, to meet  
28 the urgent requirement to increase revenue.

29  

---

<sup>22</sup> *Id.*, p. 6, fn. 8.

<sup>23</sup> Moody's Investor Services noted that CenturyLink is committed to an investment grade rating. See Direct Testimony of Jeff Glover, p. 18.



1   **Q.   WHERE MIGHT THE MERGED COMPANY FIND ADDITIONAL**  
2   **REVENUE IN ARIZONA?**

3  
4   **A.**   Where the merged company can find additional revenue is dependent on the  
5   extent to which competition limits its ability to increase rates unilaterally. This  
6   very issue was recently addressed by the Federal Communications Commission  
7   ("FCC") in its response to a request from Qwest for "forbearance" from FCC  
8   regulation of certain services in the Phoenix Metropolitan Statistical Area  
9   ("MSA"). Qwest had argued that competition was sufficiently strong in the  
10   Phoenix area to preclude the possibility of its being able to sustain small but  
11   significant unilateral rate increases, which are the indicators of "market power".  
12   The FCC rejected Qwest's application, finding that Qwest indeed retained market  
13   power, particularly for the "last mile" local loop component of the  
14   telecommunications network.<sup>24</sup>

15  
16   The FCC assessed the state of competition in both the wholesale and retail market  
17   segments in the Phoenix MSA.<sup>25</sup> It found that cable companies, such as Comcast,  
18   offer substitute telephone service to residential customers, but that wireless  
19   service does not provide price-constraining competition.<sup>26</sup> Importantly, the FCC  
20   summarized its findings for business and wholesale customers as follows:

21  
22           Under this analysis and based on the data in the record, Qwest fails  
23           to demonstrate that there is sufficient competition to ensure that, if  
24           we provide the requested relief, Qwest will be unable to raise  
25           prices, discriminate unreasonably, or harm consumers. For  
26           example, the record reveals that no carrier besides Qwest provides  
27           meaningful wholesale services throughout the Phoenix  
28           marketplace, and that competitors offering business services

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<sup>24</sup> In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. §160(c) in the Phoenix, Arizona Metropolitan Statistical Area, WC Docket No. 09-135, *Memorandum Opinion and Order* (FCC 10-113, released June 22, 2010) ("*Arizona Forbearance Order*").

<sup>25</sup> Although the FCC's findings are limited to the Phoenix MSA, it is unlikely that Qwest has less market power in the other parts of its Arizona service area, given the size and urban nature of the Phoenix MSA compared to its overall service area.

<sup>26</sup> *Arizona Forbearance Order*, para. 57.

1 largely must rely on inputs purchased from Qwest itself to provide  
2 service.<sup>27</sup>  
3

4 The FCC's findings provide the basis for evaluating the relative ability of Qwest  
5 to extract additional revenue by means of unilateral price increases from its three  
6 primary retail markets, residential, small commercial and large "enterprise"  
7 commercial.  
8

9 If, as the FCC finds, wireless is not a price-constraining competitor, then the only  
10 effective price competition for residential telephone service must come from the  
11 Voice over Internet Protocol ("VoIP") service offered by the cable TV companies  
12 and Internet service providers such as Vonage.  
13

14 A cable company offering VoIP will also provide Internet access. That being the  
15 case, Qwest's response is to offer its own "triple play" package of telephone,  
16 cable TV and Internet access or even a "quadruple play" package with the  
17 addition of wireless service from other providers.<sup>28</sup> In light of the fierce  
18 competition for these services, it is unlikely that Qwest could sustain significant  
19 rate increases either for its residential wireline service or its residential multi-  
20 service bundles.  
21

22 Small business wireline service is another matter. Businesses require fixed  
23 telephone access with publicly available number identification. They may use  
24 wireless in addition to wireline, and they may use VoIP for long-distance service,  
25 but they are still heavily dependent on the conventional telephone, at least for  
26 inbound local access. Cable TV companies that offer telephone services over  
27 their facilities do not have the same marketing advantage for business users  
28 because businesses are usually not interested in broadcast television capabilities at  
29 the workplace. Therefore, while Cable TV companies may market to businesses,

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<sup>27</sup> *Id.*, para. 2. The FCC's detailed findings as to Qwest's market power in the market for enterprise business services are set forth at paras. 87-91 and 99.

<sup>28</sup> Neither Qwest nor CenturyLink directly offers its own wireless service.

1 they are somewhat less of a competitive threat than in the residential market. In  
2 recent years, Competitive Local Exchange Carriers ("CLECs") provided some  
3 competition, but that competition is small and declining. As of June 30, 2009  
4 only 33.5 percent of the land lines in Arizona were handled by competitive  
5 carriers, down from 36.8 percent a year earlier.<sup>29</sup> Furthermore, as the FCC has  
6 noted, these competitors principally use Qwest facilities to access their customers.

7  
8 From these indications, I suspect that the merged company will probably seek  
9 additional revenues from the small business market. That additional revenue is  
10 likely to take the form of unilateral rate increases.

11  
12 The "enterprise" market is the most competitive of the three major segments of  
13 wireline telephone market, although the FCC has found that even this market is  
14 susceptible to Qwest's control of the "last mile" local loops. Most services in this  
15 category are procured through competitive bidding, and the prices paid are  
16 generally subject to contract and not publicly disclosed. Even if the prices were  
17 publicly identified, they would likely not be comparable to tariff services because  
18 so much of enterprise service comes in the form of "bundles" of service elements.

19  
20 But enterprise service does not exist in a vacuum. The ultimate ceiling on any  
21 competitive bid is the price that would be paid if the same services were  
22 purchased from the carrier's public tariff. When the published rates increase, that  
23 ceiling increases, providing more headroom for the competitors to increase their  
24 bids. Thus, even though enterprise customers can solicit competing bids, they still  
25 may experience an upward shift in those bids when the published rates for basic  
26 business services increase.

27  

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<sup>29</sup> Federal Communications Commission, "Local Telephone Competition: Status as of June 30, 2009",  
Table 8.

1 Based on the foregoing, I believe that basic business services are most susceptible  
2 to unilateral rate increases motivated by the need to raise revenue to implement  
3 the merger.  
4

5 **Q. IS IT IN THE PUBLIC INTEREST FOR THE MERGED COMPANY TO**  
6 **EXTRACT UNILATERAL RATE INCREASES IN THE ARIZONA**  
7 **MARKETS TO FUND THE MERGER?**  
8

9 A. No. This transaction is in the public interest only if the public is no worse off  
10 with the merger than without it. If the merged company increases its rates  
11 unilaterally to fund the merger, then its customers would have been better off if  
12 the merger had never taken place.  
13

14 **Q. WHAT IS THE RESOLUTION OF THIS PROBLEM?**  
15

16 A. The resolution is to impose a temporary price cap on basic business services to be  
17 effective until the synergies of the merger begin to be realized. By then, the need  
18 for additional revenue to fund the transition, including the direct costs of the  
19 merger, will have abated.  
20

21 **Q. WHAT BASIC BUSINESS SERVICE PRICES SHOULD BE CAPPED?**  
22

23 A. The basic business service rates that should be capped are single and multiple line  
24 business rates, PBX and Centrex charges, and the rates for special access services.  
25

26 **Q. HOW LONG SHOULD THIS TEMPORARY PRICE CAP REGIME**  
27 **LAST?**  
28

29 A. CenturyLink anticipates that synergies will only be fully recognized over a three  
30 to five year period following closing of the merger.<sup>30</sup> I therefore recommend that

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<sup>30</sup> Direct Testimony of Jeff Glover, p. 6.

1       there be firm price caps for up to three years after the consummation of the  
2       merger. In fairness to the Company, any longer term price cap, such as five years,  
3       should be adjusted to an inflation index such as the Gross Domestic Product  
4       ("GDP") deflator.

5       **Q.    IS YOUR RECOMMENDATION TO PLACE A LIMITED PRICE CAP ON**  
6       **BASIC BUSINESS RATES FOLLOWING THE MERGER A DEPARTURE**  
7       **FROM THE COMMISSION'S CURRENT REGULATORY SCHEME FOR**  
8       **QWEST?**

9       **A.**    The current regulatory scheme for Qwest was established by the Commission in  
10       Decision No. 68604 in 2006 when it approved the present Price Cap Plan. That  
11       decision divided Qwest's retail services into three baskets. Basket 1, consisting of  
12       basic residential services, was subject to a hard cap. Basket 2, consisting of basic  
13       business services, was subject to increases up to 25 percent annually. All  
14       remaining retail services in Basket 3 were freed from any price regulation. The  
15       business rates which I have proposed to cap are included in Baskets 2 and 3. My  
16       recommendation temporarily suspends the pricing flexibility provisions in the  
17       Price Cap Plan for only these services. This limited suspension, however, is  
18       necessary until the pressure to increase rates on business services to cover the  
19       merger-related costs passes. Absent such a suspension of pricing flexibility,  
20       business customers such as DoD/FEA cannot conclude that they will suffer no  
21       harm as a result of the merger. That is because Qwest has the incentive to use its  
22       pricing flexibility to recover integration costs from business customers long  
23       before they enjoy savings from the alleged synergies. Clearly, the Commission in  
24       2006 could not have envisioned such a major change in Qwest's corporate status  
25       and its financial needs. It is unrealistic to ignore this effect of the merger by  
26       allowing Qwest to continue to enjoy its current broad pricing flexibility for  
27       business services.

28  
29       I am not suggesting re-regulation. I am only suggesting a condition of approval  
30       that will ensure that end-users of the merged company's services will be no worse

1 off for the merger having been consummated. As noted earlier, the absence of  
2 harm to the public is a necessary requirement to a finding that the transaction is in  
3 the public interest. My proposal is for temporary price caps on only a handful of  
4 basic services, not a regulation of all rates. It is intended to cover the short period  
5 during which the pressure for increased revenue will be most forceful.

6  
7 **SERVICE QUALITY CONCERNS**

8  
9 **Q. WHY ARE YOU CONCERNED ABOUT THE SERVICE QUALITY**  
10 **RESULTING FROM THIS TRANSACTION?**

11  
12 **A.** As noted earlier in my testimony, several recent large wireline acquisitions have  
13 resulted in severe service quality degradation. I am concerned that this pattern not  
14 be repeated in Arizona following the acquisition of Qwest by CenturyLink. This  
15 concern is amplified by the service quality indicators published by the Federal  
16 Communications Commission ("FCC") that are recorded in DoD/FEA Exhibit 4  
17 attached to this testimony. In every case but one, CenturyLink scores no better or  
18 worse than Qwest, suggesting that its standards of service are not as high as those  
19 of Qwest.

20  
21 But even within Qwest, Arizona is an outlier. Large and mid-sized local exchange  
22 carriers ("LECs") submit the number of trouble reports per month per 100 lines to  
23 the FCC on an annual basis under the Automated Reporting Management  
24 Information System ("ARMIS"). This statistic includes both initial and repeat  
25 troubles on both residence and business lines. For 2009, Qwest experienced an  
26 aggregate average of 0.98 trouble reports per 100 lines per month for its 15 study  
27 areas. For Arizona, however, Qwest noted 1.31 trouble reports per 100 lines per  
28 month, which was the highest of all of the Company's 15 study areas.<sup>31</sup> The

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<sup>31</sup> "Total Trouble Reports per Month per 100 Lines (Includes Initial and Repeat Trouble Reports) for Large ILEC Study Areas, Business & Residence", 2009, p. 1.

1 ARMIS aggregate CenturyTel and Embarq (now part of CenturyLink) measures  
2 are even worse, at 1.56 and 1.65 respectively.<sup>32</sup>  
3

4 These comparisons do not bode well for the service quality that can be expected  
5 in Arizona following the transfer of Qwest to CenturyLink ownership. That  
6 service quality could decline further, for two reasons.  
7

8 The first reason has already been noted: the pressure to finance the  
9 implementation of the merger. While revenue enhancement may be one source of  
10 the funds for the merger implementation, another source could be cost cutting in  
11 the form of reduced resources, including capital investment and manpower  
12 devoted to plant maintenance and customer service. Obviously, this kind of cost  
13 cutting would lead to a deterioration of service performance.

14 The other reason for concern is the incompatibility of the Qwest and CenturyLink  
15 operating support systems. To achieve the promised synergies, CenturyLink will  
16 have to integrate its protocols and IT systems with those of Qwest. As noted in the  
17 earlier quotation from the Company's 10-Q report (pages 10-11), CenturyLink  
18 has conceded that this integration could pose severe difficulties. Past experience  
19 has demonstrated that these difficulties can result in degraded service  
20 performance and excessive costs.

21 **Q. THE APPLICANTS STATE EMPHATICALLY THAT QWEST WILL**  
22 **CONTINUE TO OPERATE AS IT DOES NOW, SO WHY ARE YOU**  
23 **CONCERNED?**

24 **A.** While the corporate identity of Qwest may continue,<sup>33</sup> the Applicants' claimed  
25 network and operational synergies can only be realized through the integration of  
26 Qwest's management and operations support systems with those of CenturyLink.  
27 That means that Qwest or CenturyLink will eventually have to cut all protocols

---

<sup>32</sup> "Total Trouble Reports per Month per 100 Lines (Includes Initial and Repeat Trouble Reports) for Mid-Sized ILEC Study Areas, Business & Residence", 2009, p. 5.

<sup>33</sup> Direct Testimony of Kristen McMillan, pp. 5-6.

1 over to a common format. As I have noted, in previous cases this cutover has  
2 proved to be difficult, costly and highly disruptive to both retail and wholesale  
3 customers.

4 For these reasons, it is important for the Arizona Commission to maintain close  
5 surveillance over CenturyLink's service performance. To be a deterrent against  
6 service degradation, the Commission should monitor the merged company's  
7 service performance and be prepared to react quickly, if need be by imposing  
8 sanctions if service quality deteriorates.

9 **Q. ARE THERE CURRENTLY SERVICE QUALITY STANDARDS FOR**  
10 **QWEST?**

11  
12 **A.** Yes. Qwest's tariff contains a "Service Quality Plan" that establishes standards  
13 for service interruptions, held orders, out-of-service clearances, and business and  
14 repair office response times. It also establishes quarterly reporting requirements,  
15 construction standards and minimum service availabilities. Importantly, it  
16 enforces these standards with bill credits and monetary penalties and offsets for  
17 each of these metrics. For example, the 2006 Plan provides that if a Qwest wire  
18 center fails to clear at least 50 percent of its out-of-service reports in less than 24  
19 hours, Qwest is penalized \$4,000 per day as long as that condition prevails. This  
20 penalty drops to \$2,000 per day if the 24-hour clearances are between 50 and 70  
21 percent, and to \$1,000 if the clearances are between 70 and 80 percent. But if  
22 Qwest can clear over 90 percent of its trouble reports in 24 hours, it receives an  
23 offset, or credit, of \$1,000 per day to apply against other penalties. This offset  
24 increases to \$2,000 for clearances over 90 percent and to \$4,000 if it can clear  
25 more than 95 percent of its trouble reports in 24 hours.

26  
27 The Price Cap Plan of 2006 provided further enhancements to this system of  
28 penalties and offsets.

29  
30 **Q. IS THIS SERVICE QUALITY PLAN ADEQUATE FOR PURPOSES OF**  
31 **MAINTAINING HIGH SERVICE QUALITY?**



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A. Yes. However, as part of its order approving the merger, the Commission should state explicitly that the current Qwest Service Quality Plan continues to apply to the merged company. With that proviso, I believe the Plan is adequate. However, there are two further enhancements that probably should be made. First, the reporting should be accelerated from quarterly to monthly. The present arrangement builds in a delay of several months between the time the service performance falls below any standard and the time that failure is known to the Commission. The increased frequency of reports would provide the Commission with more current notice of the state of the merged company's service. My recommendation imposes no hardship on the company because it already records the metrics on a monthly basis.

Second, the penalties and offsets should be cleared quarterly instead of annually. The present plan would allow Qwest's service to decline for an entire year before the Company experiences any monetary consequence. A more timely imposition of penalties and offsets would provide the Commission more immediate control and would increase the sense of urgency for the company to address declining service quality if it should occur.

These two recommendations should apply for a period of three to five years to cover the duration of the management and operational integration.

**OTHER CONCERNS**

**Q. DO YOU HAVE ANY OTHER CONCERNS REGARDING THIS MERGER?**

A. Yes. My concern relates specifically to government services. Included in the "risks" section of CenturyLink's second quarter 2010 SEC Form 10-Q is the following statement:

1 We may be unable to obtain security clearances necessary to  
2 perform certain Qwest government contracts. Certain Qwest legal  
3 entities and officers have security clearances required for Qwest's  
4 performance of customer contracts with various government  
5 entities. Following the merger, it may be necessary for us to obtain  
6 comparable security clearances. If we or our officers are unable to  
7 qualify for such security clearances, we may not be able to  
8 continue to perform such contracts.<sup>34</sup>  
9

10 **Q. IS THERE ANYTHING THE COMMISSION CAN DO TO ADDRESS**  
11 **THIS CONCERN?**  
12

13 A. The issue of security clearances is a possible negative factor associated with the  
14 merger over which the Commission has little control. Possibly the Commission  
15 could require that as a condition of approval there be no personnel changes that  
16 would jeopardize government contracts until all of the affected personnel have the  
17 required clearances.  
18

19 **SUMMARY OF RECOMMENDATIONS**  
20

21 **Q. PLEASE SUMMARIZE YOUR RECOMMENDATIONS.**  
22

23 A. In this testimony, I have recommended that, as conditions of approval of the  
24 merger:

- 25 • The Commission impose either a firm three year cap, or a five year  
26 inflation-adjusted cap, on single and multiple-line business rates, PBX and  
27 Centrex rates, and the rates for special access service.  
28
- 29 • The Commission extend Qwest's Service Quality Plan to the new  
30 company.  
31
- 32 • The reporting under the Service Quality Plan be accelerated from quarterly  
33 to monthly.  
34
- 35 • The clearing of penalties and offsets should occur quarterly rather than  
36 annually.  
37

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<sup>34</sup> CENTURYTEL INC, Form 10-Q, filed August 6, 2010, p. 34. See DoD/FEA Exhibit 3.

1

2

**Q. DOES THIS COMPLETE YOUR TESTIMONY?**

3

4

A. Yes. It does, although I should note that there are some aspects of this transaction that I have not addressed. These include such issues as the likelihood of cost savings from the transaction, the quality and extent of the merged company's broadband services, the extent to which past obligations will affect the new entity, and the wholesale market policies and the interfaces between the Company and its CLEC competitors. My silence on such issues does not mean that they are not important to DoD/FEA or that DoD/FEA will not address them later in this proceeding.<sup>35</sup>

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<sup>35</sup> I should also note that the discovery process is not completed. It is possible that further responses may require supplemental testimony.

### Experience

#### **Snaveley King Majoros O'Connor & Lee, Inc. Washington, DC**

*President (1989 to Present)*

*Vice President (1970 - 1989)*

Mr. King, a founder of the firm and acknowledged authority on regulatory economics, brings over thirty years of experience in economic consulting to his direction of the firm's work in transportation, utility and telecommunications economics.

Mr. King has appeared as an expert witness on over 300 separate occasions before more than thirty state and nine U.S. and Canadian federal regulatory agencies, presenting testimony on rate base calculations, rate of return, rate design, costing methodology, depreciation market forecasting, and ratemaking principles. Mr. King has also testified before House and Senate Committees on energy and telecommunications legislation pending before the U.S. Congress.

In telecommunications, Mr. King has testified before the Federal Communications Commission on a number of policy issues, service authorization, competitive impacts, video dialtone, and prescription of interstate depreciation rates. Before state regulatory bodies, he has presented testimony in proceedings on intrastate rates, costs earnings and depreciation.

Mr. King has testified in electric, gas and water utility cases on virtually every aspect of regulation, including cost of capital, revenue requirements, depreciation, cost allocation and rate design. Mr. King is one of the nation's leading authorities on utility depreciation practices, having testified on this subject in several dozen cases before state regulatory bodies.

In addition to his appearances as a witness in judicial and administrative proceedings, Mr. King has negotiated settlements among private parties and between private parties and regulatory offices. Mr. King also has directed depreciation studies, investment cost benefit analyses, demand forecasts, cost allocation studies and antitrust damage calculations. Mr. King directed analyses of the prices of services under Federal Government's FTS2000 long distance system.

In Canada, Mr. King designed and directed an extended inquiry into the principles and procedures for regulating the telecommunication carriers subject to the jurisdiction of the Canadian Transport Commission. He also was the principal investigator in the Canadian Transport Commission's comprehensive review of rail costing procedures.

#### **EBS Management Consultants, Inc., Washington, DC**

*Director, Economic Development Department  
(1968-1970)*

Mr. King organized and directed a five-person staff of economists performing research, evaluation, and planning relating to economic development of depressed areas and communities within the U.S. Most of this work was on behalf of federal, state, and municipal agencies responsible for community or regional economic development.

*Principal Consultant (1966-1968)*

Mr. King conducted research on a broad range of economic topics, including transportation, regional economic development, communications, and physical distribution.

#### **W.B. Saunders & Company, Inc., Washington, DC**

*Staff Economist (1962-1966)*

For this economic consulting firm, which later merged with EBS Management Consultants, Inc., Mr. King engaged in numerous research efforts relating primarily to economic development and transportation.

#### **U.S. Bureau of the Budget, Office of Statistical Standards**

*Analytical Statistician (1961-1962)*

Mr. King was responsible for the review of all federal statistical and data-gathering programs relating to transportation.

### Education

*Washington & Lee University, B.A. in Economics*

*The George Washington University, M.A. in  
Government Economic Policy*

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Appearances before State Regulatory Agencies

Electric, Gas, Water Utility Cases					
State	Client	Case		Date	
		Case Number	Utility		
AK	Exxon USA	P-89-1,2	Trans Alaska Pipeline System	October 18, 1990	
AZ	Arizona Corporation Commission Arizona Retailers Association	U-1345-I U-1345-II	Arizona Public Service Co. Arizona Public Service Co.	December 16, 1980 January 15, 1981	
CA	California Retailers Association California Retailers Association California Retailers Association California Retailers & California Manufacturers California Retailers Association	57666 57602 59351 59351 61138	Pacific Gas & Electric Co. Southern California Edison Pacific Gas & Electric Co. Southern California Edison Southern California Edison	March 6, 1978 April 25, 1978 June 12, 1981 May 20, 1982 May 28, 1982	
CO	U. S. Department of Defense J.C. Penney Company U.S. Department of Defense U. S. Department of Defense U.S. Department of Defense U.S. Department of Defense U.S. Department of Defense U.S. Department of Defense	I&S 1100 5693 I&S 1339 I&S 1540 C. Council C. Council C. Council C. Council	Colorado Springs (Elec) All Electric Utilities Colorado Springs DPU (Gas) Colorado Springs DPU (Gas) Colorado Springs DPU (Gas) Colorado Springs DPU (Elec) Colorado Springs DPU (Elec) Colorado Springs DPU (Elec)	June 14, 1977 March 8, 1978 October 18, 1979 February 9, 1982 September 30, 1984 June 6, 1985 May 19, 1986 June 30, 1987	
CT	Retailers Merchants Association Division of Consumer Counsel Public Utilities Control Auto Division of Consumer Counsel Division of Consumer Counsel Division of Consumer Counsel Division of Consumer Counsel Coalition of Hotels, Alloys & Retailers Coalition of Hotels, Alloys & Retailers	72-0204 76-0604.5 78-0303 80-0403.4 81-0413 81-0602.4 82-0701 85-10-22 87-07-01	Various Electric Utilities CL&P and HELCO Bridgeport Hydraulic Co. CL&P and HELCO United Illuminating Company CL&P and HELCO CL&P CL&P CL&P	July 22, 1976 November 10, 1977 (none) August 11, 1980 July 20, 1981 October 5, 1981 September 28, 1982 (none) April 25, 1988	

Electric, Gas, Water Utility Cases				
State	Client	Case		Date
		Case Number	Utility	
DC	D.C. People's Counsel	685	Potomac Electric Power Company	March 6, 1978
	D.C. People's Counsel	715	Potomac Electric Power Company	(none)
	D.C. People's Counsel	725	Potomac Electric Power Company	April 4, 1980
	D.C. People's Counsel	737	Potomac Electric Power Company	January 1, 1981
	Washington Metro Area Transit Authority	748	Potomac Electric Power Company	June 26, 1981
	Washington Metro Area Transit Authority	758	Potomac Electric Power Company	December 15, 1981
	D.C. People's Counsel	785	Potomac Electric Power Company	September 21, 1982
	Washington Metro Area Transit Authority	759	Potomac Electric Power Company	March 29, 1984
	D.C. People's Counsel	685 Remand	Potomac Electric Power Company	June 10, 1985
	D.C. People's Counsel	905	Potomac Electric Power Company	August 20, 1991
	D.C. People's Counsel	912	Potomac Electric Power Company	May 7, 1992
	D.C. People's Counsel	834, III	Potomac Electric Power Company	May 22, 1992
	D.C. People's Counsel	917	Potomac Electric Power Company	September 24, 1992
	D.C. People's Counsel	922	Washington Gas Light Company	June 15, 1993
	D.C. People's Counsel	929	Potomac Electric Power Company	December 16, 1993
	D.C. People's Counsel	934	Washington Gas Light Company	Filed April 22, 1994
	D.C. People's Counsel	939	Potomac Electric Power Company	March 16, 1995
	D.C. People's Counsel	917	Potomac Electric Power Company	April 16, 1995
	D.C. People's Counsel	951	Potomac Electric Power Company	February 20, 1997
	D.C. People's Counsel	945	Potomac Electric Power Company	September 29, 1999
	D.C. People's Counsel	847	Washington Gas Light Company	June 27, 2001
D.C. People's Counsel	989	Washington Gas Light Company	May 22, 2002	
D.C. People's Counsel	1016	Washington Gas Light Company	September 23, 2003	
D.C. People's Counsel	1053	Potomac Electric Power Company	June 27, 2007	
DE	Delaware PSC Staff	94-164	Artesian Water Company	Filed March 10, 1995
	Delaware PSC Staff	94-149	Wilmington Suburban Water Company	March 10, 1995
	Delaware PSC Staff	04-152	Tidewater Utilities Company	Filed July 26, 2004
FL	Florida Retail Federation	790593-EU	All Electric Utilities	March 5, 1981
	Florida Retail Federation	810002-EU	Florida Power and Light Company	July 23, 1981
	Florida Retail Federation	820097-EU	Florida Power and Light Company	September 22, 1982
	Florida Retail Federation	820097-EU	Florida Power and Light Company	April 11, 1983
	Florida Retail Federation	830012-EU	Tampa Electric Company	August 19, 1983
	Florida Retail Federation	830465-EI	Florida Power and Light Company	April 19, 1984
	Florida Retail Federation	830465-EI	Tampa Electric Company	(none)

State	Electric, Gas, Water Utility Cases				Date
	Client	Case			
		Case Number	Utility		
GA	Georgia Retail Federation	3270-U	Georgia Power Company	September 3, 1981	
	Georgia Public Service Commission	4007-U	Georgia Power Company	August 21, 1991	
	Georgia Public Service Commission	4384-U	All Electric Utilities	August 1, 1993	
	Georgia Public Service Commission	4755-U	Georgia Power Company	January 25, 1994	
	Georgia Public Service Commission	4697-U	All Utilities	May 10, 1994	
	Georgia Public Service Commission	9355-U	Georgia Power Company	November 4, 1998	
	Georgia Public Service Commission	14000-U	Georgia Power Company	October 23, 2001	
	Georgia Public Service Commission	14618-U	Savannah Electric & Power Company	March 27, 2002	
	Georgia Public Service Commission	14311-U	Atlanta Gas Light Company	April 8, 2002	
	Georgia Public Service Commission	17066-U	Georgia Power Company	July 31, 2003	
	Georgia Public Service Commission	18300-U	Georgia Power Company	October 26, 2004	
	Georgia Public Service Commission	18638-U	Atlanta Gas Light Company	March 14, 2005	
	Georgia Public Service Commission	19758-U	Savannah Electric & Power Company	March 29, 2005	
	Georgia Public Service Commission	20298-U	Atmos Energy Corp.	October 11, 2005	
	Georgia Public Service Commission	25060-U	Georgia Power Company	Filed October 22, 2007	
	Georgia Public Service Commission	27163	Atmos Energy Corp.	August 16, 2008	
HI	Public Utilities Department	2793	All Electric Utilities	February 14, 1978	
	Hawaii Consumer Advocate	4536	Hawaiian Electric Company	February 1, 1983	
IL	Illinois Retail Merchants Association ("IRMA"/Chicago Bldg. Mgrs. Association ("CBMA"))	76-0698	Commonwealth Edison	June 22, 1977	
	IRMA/CBMA	76-0568	All Electric Utilities	(none)	
	IRMA/CBMA	80-0546	Commonwealth Edison	March 5, 1981	
	IRMA/CBMA	82-0026	Commonwealth Edison	July 22, 1982	
	IRMA/CBMA	83-0537	Commonwealth Edison	March 19, 1984	
	IRMA/CBMA	87-0427	Commonwealth Edison	March/April 22, 1988	
	IRMA/CBMA	90-0169	Commonwealth Edison	October 29, 1990	
IN	City of O'Fallon, IL	02-0690	Illinois-American Water Company	Filed Feb.5, Apr.11,2003	
	Indiana Retail Council	35780-S2	N. Ind. Public Service co.	June 1, 1980	
	Indiana Retail Council	35780-S1	Public Service of Indiana	October 15, 1980	
KS	Indiana Retail Council	36318	Public Service of Indiana	May 4, 1982	
	J.C. Penney Company	115,379-U	All Kansas Utilities	January 22, 1981	





CHARLES W. KING  
Appearances before State Regulatory Agencies

State	Electric, Gas, Water Utility Cases			Date
	Client	Case Number	Case Utility	
MI	General Services Administration	U-10102	Detroit Edison Company	March 22, 1993
	Michigan Attorney General	U-11722	Detroit Edison Company	November 6, 1998
	Michigan Attorney General	U-11772	Consumers Energy/Detroit Edison	November 16, 1998
	Michigan Attorney General	U-11495	Detroit Edison Company	December 8, 1999
	Michigan Attorney General	U-11956	Consumer Energy/Detroit Edison	December 15, 1999
	Michigan Attorney General	U-12505	Consumers Energy Company	September 7, 2000
	Michigan Attorney General	U-12478	Detroit Edison Company	October 5, 2000
	Michigan Attorney General	U-12639	Consumers Energy/Detroit Edison	July 18, 2001
	Michigan Attorney General	U-13000	Consumers Energy Company	January 29, 2002
	Michigan Attorney General	U-13380	Consumers Energy Company	September 9, 2002
	Michigan Attorney General	U-13715	Consumers Energy Company	April 24, 2003
	Michigan Attorney General	U-13808	Detroit Edison Company	Dec 12, 2003; Jan 30, Mar 5, 04
	Michigan Attorney General	U-12999	Detroit Edison Company	March 10, 2004
	Michigan Attorney General	U-13898.9	Consumers Energy Company	August 23, 2004
	Michigan Attorney General	U-14201	Michigan Consolidated Gas Co.	Filed December 5, 2004
	Michigan Attorney General	U-14274	Detroit Edison Company	Filed February 15, 2005
	Michigan Attorney General	U-14148	Consumers Energy Company	Filed March 2, 25, 2005
	Michigan Attorney General	U-14399	Consumers Energy Company	July 29, 2005
	Michigan Attorney General	U-14428	Detroit Edison Company	September 7, 2005
	Michigan Attorney General	U-14292	All Michigan Utilities	September 27, 2005
	Michigan Attorney General	U-13808-R	Detroit Edison Company	November 7, 2005
	Michigan Attorney General	U-14547	Consumers Energy Company	Nov.7, 2005; Mar. 22, 2006
	Michigan Attorney General	U-14701	Consumers Energy Company	March 21, 2006
	Michigan Attorney General	U-14526	Consumers Energy Company	April 11, 2006
	Michigan Attorney General	U-14561	All Gas Distribution Utilities	June 1, 2006
	Michigan Attorney General	U-15002	Detroit Edison Company	December 8, 2006
	Michigan Attorney General	U-15245	Consumers Energy Company	December 11, 2007
	Michigan Attorney General	U-15417	Detroit Edison Company	April 2, 2008
	Michigan Attorney General	U-15244	Detroit Edison Company	July 15, 2008
	Michigan Attorney General	U-15506	Consumers Energy Company	September 12, 2008
	Michigan Attorney General	U-15002-R	Detroit Edison Company	October 16, 2008
	Michigan Attorney General	U-15645	Consumers Energy Company	April 27, July 30, 2009
	Michigan Attorney General	U-15768	Detroit Edison Company	July 9, July 30, 2009
	Louisiana Pacific Corp.	U-15981	Wisconsin Electric Power Co.	Dec 22, 2009; Jan 22, 2010
MN	Minnesota Retail Federation	EOO26R-77-611	Northern States Power	1979
MO	Missouri Retailers Association Missouri Public Counsel Missouri Public Counsel Missouri Public Counsel	EO-78-161 ER-2006-0315 GR-2007-0003 ER-2007-0002	Kansas City Power & Light Company Empire District Electric Company Ameren UE (Gas) Ameren UE (Electric)	February 19, 1981 September 14, 2006 Filed December 15, 2006 March 22, 2007
NC	North Carolina Merchants Association	E-100	All Electric Utilities	December 18, 1975

CHARLES W. KING  
Appearances before State Regulatory Agencies

Electric, Gas, Water Utility Cases					Date
State	Client	Case		Utility	
		Case Number			
ND	North Dakota Public Service Commission	PU-400-00-521	Xcel Energy, Inc.	April 20, 2001	
	North Dakota Public Service Commission	PU-399-01-186	Montana-Dakota Utilities (Electric)	February 25, 2002	
	North Dakota Public Service Commission	PU-399-02-183	Montana-Dakota Utilities (Gas)	October 7, 2002	
	North Dakota Public Service Commission	PU-399-02-183	Montana-Dakota Utilities (Gas Depr.)	Filed April 7, 2003	
	North Dakota Public Service Commission	PU-399-03-296	Montana-Dakota Utilities (Electric)	Filed October 15, 2003	
	North Dakota Public Service Commission	PU-04-97	Montana-Dakota Utilities (Gas)	Filed July 6, 2004	
	North Dakota Public Service Commission	PU-06-525	Northern States Power (Gas)	Filed May 1, 2007	
	North Dakota Public Service Commission	PU-07-776	Northern States Power (Electric)	June 25, 2008	
	North Dakota Public Service Commission	PU-08-862	Otter Tail Power Company	April 6, 2009	
NH	Business & Industry Association of N.H.	79-187-II	Public Service of N.H.	February 6, 1981	
	Business & Industry Association of N.H.	80-260	Public Service of N.H.	February 5, 1981	
	Business & Industry Association of N.H.	82-333	Public Service of N.H.	November 2, 1983	
NJ	N.J. Retail Merchants Association	803-151	All New Jersey Utilities	March 31, 1981	
	Department of Public Advocate	815-459	N.J. Natural Gas Company	(none)	
	Resorts International Hotel, Inc.	8011-827	Atlantic City Sewerage Co.	(none)	
	Dept. of Public Advocate	822-116	Atlantic City Electric Co.	August 11, 1982	
	Dept. of Public Advocate	355-87	Elizabethtown Gas	June 9, 1987	
	Dover Township Fire Chiefs	88-080967	Tom's River Water Company	February 22, 1989	
NY	NY Council of Retail Merchants	26806	All Electric Utilities	February 3, 1976	
	Metropolitan N.Y. Retail Council	27029	Consolidated Edison Company	(none)	
	Metropolitan N.Y. Retail Council	27136	Long Island Lighting Company	July 1, 1977	
	N.Y. Metro. Transit Authority	27353	Consolidated Edison Company	September 5, 1980	
OH	Ohio Council of Retail Association	88-170-EL	Cleveland Elec. Illuminating	(none)	
	Ohio Council of Retail Association	83-1529-EL	Cincinnati Gas & Electric	February 15, 1992	
	Ohio Energy Group	08-936-EL-SSO	FirstEnergy Companies	Filed September 25, 2008	

CHARLES W. KING  
Appearances before State Regulatory Agencies

State	Electric, Gas, Water Utility Cases			Date
	Client	Case		
		Case Number	Utility	
PA	Pennsylvania Retail Association Southeastern Pa. Transp. Authority Eastern Penn Energy Users Group Eastern Penn Energy Association Penn Business Utility User Group Pennsylvania Office of Consumer Advocate Pennsylvania Office of Public Advocate	76-PRMD-7 R-811626 R-822169 R-842651 R-850152 R-00016339 R-2008-203269	All Electric Utilities Philadelphia Electric Company Penn. Power & Light Company Penn. Power & Light Company Philadelphia Electric Company Pennsylvania-American Water Co. Pennsylvania-American Water Co.	September 7, 1977 December 11, 1981 March/April 1983 December 3, 1984 February 19, 1986 September 19, 2001 August 6, 2008; Sept.15, 2008
TN	Attorney General of Tennessee Attorney General of Tennessee	07-00105 08-00039	Atmos Energy Corp. Tennessee-American Water Co.	Filed August 21, 2007 August 26, 2007
TX	Houston Retailers Association Houston Retailers Association Cities for Fair Utility Rates	5779 6765 8425/8431	Houston Lighting Company Houston Lighting Company Houston Lighting Company	October 19, 1984 September 25, 1986 April 25, 1989
UT	Div. Of Public Utilities Dept of Commerce Div. Of Public Utilities Dept of Commerce Div. Of Public Utilities Dept of Commerce	98-2035-33 05-057-T01 07-035-13	Pacific Corp Questar Gas Company Rocky Mountain Power Co.	Filed August 16, Sept 22, 1999 May 17, 2006 Filed October 15, 2007
VA	Consumer Congress of Virginia Consumer Congress of Virginia Va. Business Committee on Energy Virginia Pipe Trades Council	19426 19960 PUE 7900012 PUE 8900051	Virginia Electric Power Company Virginia Electric Power Company Virginia Electric Power Company Old Dominion Electric Corp. &	July 1, 1975 September 19, 1978 February 25, 1981 October 31, 1989
WA	WA Attorney General - Public Counsel WA Attorney General - Public Counsel WA Attorney General - Public Counsel	UE-072300;UG-072301 UE-080220 UE-08416;UG-08417	Puget Sound Energy PacifiCorp Avista Utilities	Filed May 30, 2008 Filed August 15, 2008 September 19;October 10, 2008
WI	Wisconsin Merchants Federation	6630-ER-2	Wisconsin Electric Power Company	May 15, 1978

CHARLES W. KING  
Appearances before State Regulatory Agencies

Telecommunications Cases					
State	Client	Case		Date	
		Case Number	Utility		
AL	U.S. Department of Defense	24472	All Telephone Companies	June 14, 1995	
AK	GCI Communications, Inc. GCI Communications, Inc.	U-97-82, U-97-143 U-05-46	Alaska Communications Systems Matanuska Telephone Association	Filed Feb 25, April 5, 2004 October 28, 2005	
AZ	Arizona Burglar & Fire Alarm Association Arizona Burglar & Fire Alarm Association Federal Executive Agencies U.S. Department of Defense	9981-E- 1051-80-64 E-1051-88-146 T-01051B-99-0105	Mountain State Telephone Mountain State Telephone Mountain State Telephone US WEST Communications	(none) (none) Filed July 26, Sept 8, 2000	
CA	Western Burglar & Fire Alarm Association Western Burglar & Fire Alarm Association Western Burglar & Fire Alarm Association Western Burglar & Fire Alarm Association Western Burglar & Fire Alarm Association Western Burglar & Fire Alarm Association Western Burglar & Fire Alarm Association California Cellular Resellers Federal Executive Agencies California Cellular Resellers Cellular Services, Inc. Federal Executive Agencies	59849 5984cont. A83-01-22 A83-02-02 A82-11-07 A85-01-034 A87-01-02 A88-07-17019 A.88-11-1040 1.87-11-033 1.88-11-040 1.88-11-040 A92-05-004	Pacific Telephone & Telegraph Pacific Telephone & Telegraph Pacific Telephone & Telegraph General Telephone of California Pacific Telephone & Telegraph Pacific Telephone & Telegraph General Telephone of California Pac. Bell Tel. & GTE of CA. All Cellular Carriers All Telephone Companies All Cellular Carriers All Cellular Carriers Pacific Telephone & Telegraph	March 25, 1981 June 23, 1982 June 29, 1983 January 17, 1984 Jan. 18, Oct. 31, Nov 28, 1984 June 4, 1985, October 2, 1986 October 22, 1987 January 23, 1989 August 11, 1989 March 6-7, 1991 August 19, 1991 October 3, 1991 June 9, 1993	
CO	U.S. Department of Defense U.S. Department of Defense U.S. Department of Defense U.S. Department of Defense Colorado Municipal League U.S. Department of Defense U.S. Department of Defense U.S. Department of Defense U.S. Department of Defense U.S. Department of Defense U.S. Department of Defense AT&T	I&S 717 I&S 1700 Appl. I&S 1766 Appl 36883 I&S 891-O82T 905-544T 90A-665T 92M-039T 92S-229T 90A-665T 96S-331T	Mountain Bell Telephone Company Mountain Bell Telephone Company Mountain Bell Telephone Company Mountain Bell Telephone Company Mountain Bell Telephone Company U.S. West Communications U.S. West Communications U.S. West Communications U.S. West Communications U.S. West Communications U.S. West Communications U.S. West Communications	1972 (none) September 18, 1986 November 28, 1988 December 13, 1988 February 21, 1990 July 17, 1991 October 23, 1991 February 24-24, 1992 July 30-31, 1992 November 6, 1996 April 17, 1997	

State	Telecommunications Cases				Date
	Client	Case		Utility	
		Case Number			
CT	Connecticut Consumer Counsel CT Cellular Resellers Assn. CT Cellular Resellers Coalition AT&T Connecticut Consumer Counsel Connecticut Consumer Counsel	770526 89-12-05 94-03-27 AT&T/SNET Arbitration 96-04-07 00-07-17	Southern New England Telephone Co. Southern New England Telephone Co. Springwich Cellular/Bell Atlantic Southern New England Telephone Co. Southern New England Telephone Co. Southern New England Telephone Co.	November 10, 1977 (none) May 16, June, 1994 Filed October 28, 1996 February 10, 1998 December 5, 2000	
DC	D.C. People's Counsel D.C. People's Counsel General Services Administration General Services Administration General Services Administration General Services Administration	729 798 827 854 850 926	Chesapeake & Potomac Tel. Co. Chesapeake & Potomac Tel. Co. Chesapeake & Potomac Tel. Co. Chesapeake & Potomac Tel. Co. Chesapeake & Potomac Tel. Co. Chesapeake & Potomac Tel. Co.	May 13, 1980 July 18, 1983 May 7, 1985 April 16, 1987 October 7, 1991 October 7, 1993	
DE	Public Service Commission Federal Executive Agencies Public Service Commission	Depr.Repre 86-20 Depr.Repre	Diamond State Telephone Co. Diamond State Telephone Co. Diamond State Telephone Co.	April 1, 1985 July 31, 1987 March 8, 1988	
FL	GTE Sprint Communications Company Office of Public Counsel Federal Executive Agencies Federal Executive Agencies Federal Executive Agencies	720536-TP Depr.Repre 880069-TL 880069-TL 880069-TL	All Telephone Companies Southern Bell Southern Bell Southern Bell Southern Bell	September 12, 1983 July 30, 1986 July 21, 1988 November 30, 1990 February 11, 1992	
GA	Georgia Attorney General Federal Executive Agencies Federal Executive Agencies Georgia Public Service Commission	3893-U 3905-U 3987-U 4018-U	Southern Bell Telephone Co. Southern Bell Telephone Co. Southern Bell Telephone Co. Southern Bell Telephone Co.	January 8, 1990 June 12, 1990 February 13, 1992 Jan 14, Feb 10, 1993	
HI	Hawaii Public Utility Commission Four Hawaii Counties Department of Defense Department of Defense Department of Defense Department of Defense	1871 4588 7579 94-0093 7702 94-0298 7720	Hawaiian Telephone Company Hawaiian Telephone Company Hawaiian Telephone Company Oceanic Communications All Communications Carriers GTE Hawaiian Telephone Company Verizon-Hawaii	July 8, 1971 December 15, 1983 April 26, 1994 March 13, 1995 June 2, 1995 May 7, 1996 November 15, 2000	

State	Telecommunications Cases				Date
	Client	Case		Utility	
		Case Number			
ID	U.S. Department of Energy U.S. Department of Energy	U-1000-63 U-1000-70	Mountain Bell Telephone Co. Mountain Bell Telephone Co.	May 16, 1983 March 6, 1984	
IL	Illinois Alarm Companies Attorney General of Illinois GTE Sprint Communications Co. Federal Executive Agencies Federal Executive Agencies	79-0143 81-0478 83-0142 89-0033 09-0268	Illinois Bell Telephone Illinois Bell Telephone All Telephone Companies Illinois Bell Telephone Verizon-Frontier Sale	September 26, 1979 December 28, 1981 August 4, 1983 June 12, 1989 Oct.20, Dec.14, 2009	
KS	State Corporation Commission Federal Executive Agencies Federal Executive Agencies	Depr. Repr. 166.856-U 190, 492	Southwestern Bell Southwestern Bell All Telephone Companies	May 12-14, 1986 November 7, 1989 November 4, 1994	
KY	Kentucky Cable Telecommunications Assn. Kentucky Cable Telecommunications Assn.	2000-414 2000-39	Blue Grass Energy Cooperative Cumberland Valley Electric, Inc.	January 11, 2001 January 11, 2001	
MD	Maryland People's Counsel Maryland People's Counsel Maryland People's Counsel Maryland People's Counsel Federal Executive Agencies Federal Executive Agencies Federal Executive Agencies	6813 6881 7025 7467 7851 8106 8274	C&P Telephone Company C&P Telephone Company C&P Telephone Company C&P Telephone Company C&P Telephone Company C&P Telephone Company C&P Telephone Company	1975 December 17, 1975 March 15, 1975 October 20, 1981 March 20, 1985 May 9, 1988 August 2, 1990	
MI	Michigan Attorney General Michigan Attorney General	U-8911 U-9553	Michigan Bell Telephone Co. AT&T Communications/MCI	November 7, 1988 December 4, 1990	
MN	GTE Sprint Communications Co. U.S. Department of Defense	83-102-HC 87-021-BC	All Telephone Companies Northwest Bell Telephone Co.	August 5, 1983 (none)	

State	Telecommunications Cases				Date
	Client	Case		Utility	
		Case Number			
MO	GTE Sprint Communications Co. Federal Executive Agencies Federal Executive Agencies	TR83-253 TC-89-14 TO-89-56		Southwestern Bell Tel. Co. Southwestern Bell Tel. Co. Southwestern Bell Tel. Co.	September 5, 1983 (none) November 7, 1990
MS	Federal Executive Agencies	U-5453		South Central Bell Tel. Co.	May 15, 1990
NJ	Department of Public Advocate Department of Public Advocate Department of Public Advocate Department of Public Advocate Department of Public Advocate	Depr.Repr. 815-458 Depr.Repr. Depr.Repr. T092030358 TMO05080739		N.J. Bell Telephone Company N.J. Bell Telephone Company N.J. Bell Telephone Company N.J. Bell Telephone Company N.J. Bell Telephone Company United Telephone Co. of New Jersey	Mar-79 October 15, 1981 March 1, 1982 February 1, 1985 September 30, 1992 January 5,2006
NM	New Mexico Corporation Commission New Mexico Corporation Commission	1032 86-151-TC		Mountain Bell Telephone Co. General Telephone of Southwest	November 14, 1983 February 5, 1987
NV	Prime Cable of Las Vegas Prime Cable of Las Vegas	95-8034/8035 96-9035		Central Telephone - NV Sprint/Centel, Nevada Bell	Filed November 22, 1995 June 2, 1997
NY	Holmes Protection, Inc. Holmes Protection, Inc. 5 Alarm Companies GTE Sprint Communications Co.	27350 27469 27710 28425		New York Telephone Company New York Telephone Company New York Telephone Company All Telephone Companies	October 17, 1978 May 17, 1979 July 24, 1980 July 8, 1983
PA	City of Philadelphia	R-832316		Pennsylvania Bell Telephone	September 20, 1983
SC	Office of Consumer Advocate Office of Consumer Advocate Office of Consumer Advocate Office of Consumer Advocate Office of Consumer Advocate U.S. Department of Defense	Depr.Repr. 86-511-C 86-541-C Depr.Repr. 89-180-C 2009-220-C		Southern Bell Southern Bell General Telephone of South Southern Bell ALLTEL of South Carolina Verizon/Frontier Communications	July 1, 1986 December 11, 1986 April 8, 1987 July 10, 1989 September 26, 1989 August 27, 2009

CHARLES W. KING  
Appearances before State Regulatory Agencies

State	Telecommunications Cases				Date
	Client	Case		Utility	
		Case Number			
TX	U.S. Department of Defense	8585/8218	Southwestern Bell Telephone Co.	(none)	
VA	U.S. Dept. Of Defense, GSA, et Federal Executive Agencies	19696 PUC 890014	C&P Telephone Company All Telephone Companies	October 6, 1976 February 13, 1989	
VI	V.I. Department of Commerce V.I. Public Service Commission	205 341	Virgin Islands Telephone Co. Virgin Islands Telephone Co.	April 29, 1980 March 20, 1991	
WA	U.S. Department of Defense U.S. Department of Defense U.S. Department of Defense U.S. Department of Defense WA Attorney General/TRACER U.S. Department of Defense U.S. Department of Defense WA Attorney General/TRACER WA Attorney General/TRACER U.S. Department of Defense WA Attorney General/WeBTEC/AARP WA Attorney General WA Attorney General U.S. Department of Defense	U-72-39 U-87-796-T U-88-20524 U-89-2698-F UT-940641 UT-941464  UT-951425 UT-961632 UT-021120 UT-040788 UT-040520 UT-050814 UT-090842	Pacific Northwest Bell Pacific Northwest Bell Pacific Northwest Bell US West Communications US West Communications US West Communications US West Communications GTE Northwest, Inc Qwest Communications Verizon Northwest, Inc. Verizon Northwest, Inc. Verizon - MCI Merger Verizon-Frontier Sale	1973 December 20, 1983 November 8, 1988 November 28, 1989 Filed October 14, 1994 June 22, 1995 January 22, 1996 Filed June 23, 1997 July 29, 1997 May 22, 2003 August 12, 2004 February 2, 2005 November 2, 2005 Nov.3.2009;Jan 28, 2010	
WV	U.S. Department of Defense	09-0871-T-PC	Verizon-Frontier Sale	November 16, 2009	
WI	GTE Sprint Wisconsin Consumers Utility Board Wisconsin Consumers Utility Board	6720-TR-38 2055-TR-102 5846-TR-102	All Telephone Companies CenturyTel of Central Wisconsin Telephone USA, LCC	October 20, 1983 June 26, 2002 June 26, 2002	



Federal Communications Commission			
Client	Docket	Subject	Date
Department of Defense Airline Parties Airline Parties National Data Corporation Press Wire Services Aeronautical Radio Department of Defense State of Hawaii International Record Carriers ITT World Communications Aeronautical Radio MCI Ind. Data Com. Mfg. Assn. Tymnet, Inc. Adelphia Jones Intercable, et. al. Adelphia Jones Intercable, et. al. Adelphia Jones Intercable, et. al.	16020 16258 18128 19989 19919 20814 20690 21263 CC78-97 CC84-633 CC78-72 CC84-800 CC85-26 ENF84-22 Bell Atlantic Bell Atlantic Bell Atlantic	Consat Rate of Return Bell System Rates TELPAC WATS Private Line Rates Private Line Rates 1,544 Mbps Service Interstate Separation Telex/TWX Rates Rate of Return Access Line Charges Rate of Return AT&T Accounting Plan Packet Switching Costs Video Dialtone Video Dialtone Video Dialtone	1973 July 22, 1968 3/22, 10/15 1971, Feb. 22, 1972 (none) (none) October 5, 1978 January 30, 1979 February 7, 1979 March 6, 1980 (none) (none) (none) (none) (none) Filed 7/29/94 Filed 8/23/94 Filed 2/21/95
Nuclear Regulatory Commission			
Fauquier League for Environment Protection	50-328 50-329	Va. Electric Power Co.	1976
Postal Rate Commission			
Association of Third Class Mail Users Dow Jones & Company Dow Jones & Company Dow Jones & Company Dow Jones & Company Dow Jones & Company Dow Jones & Company Dow Jones & Company Dow Jones & Company Dow Jones & Company Dow Jones & Company Dow Jones & Company Dow Jones & Company	R71-1 R72-1 R74-1 MC76-2 MC79-3 R80-1 C82-1 R84-1 R87-1 R90-1 MC91-1 MC91-3	Rates Rates Rates Rate Structure Rate Structure Rates Rate Structure Postal Costs Rate Structure Costs Rate Structure Costs Pre-barcoding Discounts Palletization Discounts	1970 1972 September 13, 1974 January 6, 1979 September 12, 1979 November 25, 1980 (none) June 14, 1984 November 2, 1987 Sept 12, Oct 10, 1990 November 19, 1991 March 2, 1992

Client	Docket	Subject	Date
U.S. Congress			
National Retail Merchants Association	House/Senate Hearings	Electric Rate Reform Legislation	1976, 1977 & 1979
National Wireless Resellers Association	House Commerce Committee	Interconnection & Resale of Wireless Services	October 12, 1995
Federal Maritime Commission			
State of Hawaii Foss Alaska Line Palmetto Shipping and Stevadoring	71-18 79-54 85-20	Ocean Shipping Rates Barge Rate Increase Vessel Charge Liability	October-71 July 1979 October 27, 1986
Interstate Commerce Commission - Surface Transportation Board			
Western Coal Traffic League Western Coal Traffic League Western Coal Traffic League Arkansas Power & Light Co. Central Illinois Light Co. Western Coal Traffic League Snively King Majors O'Connor & Lee, Inc. Williams Energy Services, Inc	Ex Parte 349 Ex Parte 357 Ex Parte 375 (Sub1) 37276 37450 Ex Parte 347 Ex Parte 664 Ex Parte 582, Sub 1	R.R. Rate Increase R.R. Rate Increase R.R. Rate Increase Cost of Capital Cost of Capital Costing Methods Cost of Capital Rail Merger Guidelines	May-76 Oct-78 June 1, 1980 (none) March 10, 1981 (none) December 8, 2006 April 5, 2001
Civil Aeronautics Board			
Thomas Cook, Inc.	36595	Air Fare Deregulation	(none)
Copyright Royalty Tribunal			
Public Broadcasting Service	88-2-86CD	Television Valuation	(none)

**CHARLES W. KING**  
**Appearances before Federal Regulatory Agencies**

Client	Docket	Subject	Date
<b>Federal Energy Regulatory Commission</b>			
Exxon USA Consumer Advocates of DE,DC,OH,MD,NJ,PA,WV,VA Consumer Advocates of DE,DC,OH,MD,NJ,PA,WV Maryland Office of People's Counsel Maryland Office of People's Counsel Louisiana Public Service Commission Maryland Office of People's Counsel	OR89-2-000 ER08-386-000 ER08-23-000 ER08-686-01 ER08-1329 ER09-1224 ER10-355	Pipeline Quality Bank Electric Transmission Cost of Equity Electric Transmission Cost of Equity Electric Transmission Cost of Equity Electric Transmission Cost of Equity Depreciation Electric Transmission Cost of Equity	October 18, 1990 March 26, 2008 May 21, 2008 April 7, 2008; July 8, 2008, August, 2008 March 2010 December 22, 2010
<b>Canadian Transport Commission</b>			
<p style="text-align: center;">Rail Costing Inquiry, 1967-1969 Telecommunications Costing Inquiry, 1972-1975</p>			

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

At a session of the Public Service Commission of West Virginia, in the City of Charleston, on the 16<sup>th</sup> day of August 2010.

CASE NO. 09-0871-T-PC

FRONTIER COMMUNICATIONS CORPORATION, CITIZENS  
TELECOMMUNICATIONS COMPANY OF WEST VIRGINIA dba  
FRONTIER COMMUNICATIONS OF WEST VIRGINIA,  
NEW COMMUNICATIONS HOLDINGS, INC.,  
NEW COMMUNICATIONS ILEC HOLDINGS, INC.,  
NEW COMMUNICATIONS ONLINE and LONG DISTANCE, INC.,  
VERIZON WEST VIRGINIA INC., VERIZON LONG DISTANCE,  
LLC, and VERIZON ENTERPRISE SOLUTIONS, LLC.

Joint Petition for consent and approval of the transfer of  
Verizon's local exchange and long distance business in  
West Virginia to companies to be owned and controlled  
by Frontier Communications.

**COMMISSION ORDER**

The Commission (i) denies a request to reopen this matter, (ii) transfers the substance of the Petition to Reopen to a new casefile and (iii) affords FiberNet, LLC, (FiberNet) and Frontier West Virginia Inc., (Frontier WV) an opportunity to mediate their dispute.

**BACKGROUND**

On May 29, 2009, Frontier Communications Corporation, New Communications Holdings, Inc., New Communications ILEC Holdings, Inc., New Communications Online and Long Distance, Inc., Verizon West Virginia Inc. (Verizon WV), Verizon Long Distance, LLC and Verizon Enterprise Solutions, LLC (together Applicants) jointly applied for approval of transactions to spin off substantially all Verizon wireline business in West Virginia and merge those entities with Frontier (Transaction). Joint Application.

The Commission subsequently received and granted requests to intervene from the Consumer Advocate Division (CAD), competing carriers including FiberNet, the Communications Workers of America (CWA) and the federal government.



On May 13, 2010, the Commission issued an Order approving the Transaction requested in the Joint Application, subject to a series of conditions designed to remediate concerns raised by the parties at hearing. The Commission also adopted two settlements between the Applicants and competing carriers that were attached and incorporated into the conditions listed in Appendix A to the Order.

On July 21, 2010, FiberNet filed a Petition to Reopen this matter citing a number of problems it experienced when attempting to obtain wholesale services through the Frontier WV operational support system (OSS). FiberNet asserted that the various problems have created delays in providing service to FiberNet customers and increased costs for FiberNet. FiberNet requested that the Commission reopen this matter and direct Frontier WV to provide an OSS that is functionally equivalent to the system provided by Verizon WV.

On July 23, 2010, the Commission directed Frontier WV to file a response to the FiberNet request to reopen this matter within ten days.

On July 29, 2010, CAD filed a letter in support of the FiberNet reopening request.

On July 30, 2010, Frontier WV filed an answer to the Petition to Reopen under seal. Frontier WV acknowledged some problems arising from the implementation of the OSS, but asserted that it has corrected most of the problems FiberNet listed in the Petition to Reopen. Having resolved the flaws listed by FiberNet, Frontier WV requested that the Commission deny the Petition to Reopen. Alternatively, Frontier WV recommended that the Commission transfer the Petition to Reopen to a separate proceeding because the sale closing has already occurred and establish a framework for an alternative dispute resolution including mediation.

On August 2, 2010, the CWA filed a letter supporting the FiberNet Petition to Reopen.

On August 4, 2010, Frontier WV filed a redacted version of its response. The redacted version only deleted the FiberNet specific statistical data contained in the original filing.

### DISCUSSION

After review of the FiberNet petition and the Frontier WV response, the Commission concludes that the FiberNet allegations concern technical difficulties that appear to have developed after closing of the Verizon WV sale. Most of those difficulties appear to be specific to FiberNet and are best handled in a complaint proceeding. Additionally, as Frontier WV noted, the Verizon WV sale has now closed, and Verizon no longer owns its former operating subsidiary. Thus, the Commission will sever the allegations from the July 21, 2010 Petition to Reopen, transfer them to a separate complaint proceeding for further processing and deny the Petition to Reopen this matter.

In consideration of the FiberNet desire for swift resolution of this matter and the request from Frontier WV for an opportunity to mediate the dispute, the Commission will afford the parties an opportunity for mediation. Thus, the parties shall contact the Chief Administrative Law Judge (ALJ) at the earliest opportunity and no later than ten days from the entry of this Order to arrange for mediation if they are both willing to enter mediation. In the event that mediation resolves this dispute, the parties shall file a request to dismiss the new complaint. If the dispute remains unresolved, the Chief ALJ shall file a letter in the complaint proceeding informing the Commission that mediation was unsuccessful, and the Commission will continue to process the matter as a separate complaint proceeding. The parties are strongly encouraged to engage in earnest mediation in order to resolve their dispute. Commission Staff may participate in the mediation of this matter if they indicate a desire to do so to the Chief ALJ.

The Commission notes that a portion of the July 30, 2010 Frontier WV response remains under seal without a motion for a protective order from the Commission. The Commission will not seal the redacted material without a properly supported request for protective treatment. Thus, the Commission will release that material into the public file unless FiberNet files a properly supported protective treatment request within seven days of the entry of this Order.

#### **FINDINGS OF FACT**

1. FiberNet filed a Petition to Reopen this matter asserting numerous problems with the Frontier WV OSS that are allegedly harming its business and customers. Petition to Reopen.
2. The difficulties FiberNet alleged with the Frontier WV OSS appear to be specific to FiberNet. Id.
3. Frontier WV filed a response asserting that it has addressed most of the OSS problems FiberNet cited. July 30, 2010 Frontier WV Response.
4. Frontier WV filed a portion of its response under seal without a motion for a protective order. Id.

#### **CONCLUSIONS OF LAW**

1. It is reasonable to sever the substantive complaints in the FiberNet Petition to Reopen from this proceeding and transfer them to a new complaint case.
2. The Commission should offer mediation to the parties because FiberNet seeks an expeditious resolution and Frontier WV requested mediation.

3. It is reasonable to unseal the redacted portions of the July 30, 2010 Frontier WV response unless FiberNet files for protective treatment in seven days.

**ORDER**

IT IS THEREFORE ORDERED that the request to reopen this matter is denied.

IT IS FURTHER ORDERED that the substantive complaints contained in the Petition to Reopen are transferred to a new complaint case file. The Executive Secretary shall file copies of the July 21, 2010 Petition to Reopen, the July 30, 2010 Frontier WV response and a copy of this Order in the new case file.

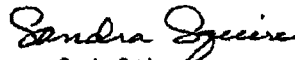
IT IS FURTHER ORDERED that the Executive Secretary shall unseal the redacted portions of the July 30, 2010 Frontier WV response unless FiberNet files a properly supported request for a protective order within seven days of the entry of this Order.

IT IS FURTHER ORDERED that FiberNet and Frontier WV are afforded an opportunity to mediate their dispute regarding the Frontier OSS and should contact the Chief ALJ within ten days of the entry of this Order concerning their willingness to enter into mediation. The Chief ALJ shall advise the Commission by letter filed in the complaint proceeding in the event that mediation is unsuccessful or if the parties indicate that they are not willing to mediate this matter.

IT IS FURTHER ORDERED that on entry of this Order this matter shall be removed from the active docket of Commission cases.

IT IS FURTHER ORDERED that the Commission Executive Secretary shall serve a copy of this Order by electronic service on all parties requesting that service, on all other parties by First Class Mail and on both the Chief ALJ and Staff by hand delivery.

A True Copy. Teste:

  
Sandra Squire  
Executive Secretary

MJM/lld  
090871ci.wpd

## **CENTURYTEL INC (CTL)**

P O BOX 4065  
MONROE, LA, 71203  
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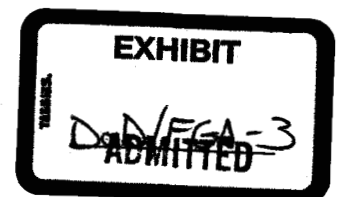
### **10-Q**

Quarterly report pursuant to sections 13 or 15(d)  
Filed on 8/6/2010  
Filed Period 6/30/2010



**THOMSON REUTERS**

**Westlaw BUSINESS**





UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

☒ Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the quarterly period ended June 30, 2010

or

☐ Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Commission File Number: 1-7784

CenturyLink, Inc.

(Exact name of registrant as specified in its charter)

Louisiana  
(State or other jurisdiction of  
incorporation or organization)

72-0651161  
(I.R.S. Employer  
Identification No.)

100 CenturyLink Drive, Monroe, Louisiana 71203  
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: (318) 388-9000

Former name, if changed since last report: CenturyTel, Inc.

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See definition of "large accelerated filer", "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☒ Accelerated filer ☐ Non-accelerated filer  
[ ] Smaller reporting company ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

As of July 31, 2010, there were 301,445,975 shares of common stock outstanding.

## PART II. OTHER INFORMATION

## CenturyLink, Inc.

## Item 1. Legal Proceedings.

See Note 11 to the financial statements included in Part I, Item 1, of this report.

## Item 1A. Risk Factors.

## Risk Factors

Any of the following risks could materially and adversely affect our business, financial condition, results of operations, liquidity or prospects. The risks described below are not the only risks facing us. Please be aware that additional risks and uncertainties not currently known to us or that we currently deem to be immaterial could also materially and adversely affect our business operations.

*Risks Related to Our Business*

If we continue to experience access line losses similar to the past several years, our revenues, earnings and cash flows may be adversely impacted.

Our business generates a substantial portion of its revenues by delivering voice and data services over access lines. We have experienced substantial access line losses over the past several years due to a number of factors, including increased competition and wireless and broadband substitution. We expect to continue to experience access line losses in our markets for an unforeseen period of time. Our inability to retain access lines could adversely impact our revenues, earnings and cash flow from operations.

Weakness in the economy and credit markets may adversely affect our future results of operations.

To date, we have not been materially impacted by recent weaknesses in the credit markets; however, these weaknesses may negatively impact our operations in the future if overall borrowing rates increase. In addition, if the economy and credit markets continue to remain weak, it may impact our ability to collect our receivables. This weakness may also cause our customers to reduce or terminate their receipt of service offerings from us. Economic weakness could also negatively affect our vendors. We cannot predict with certainty the impact to us of any further deterioration or weakness in the overall economy and credit markets.

We face competition, which we expect to intensify and which may reduce market share and lower profits.

As a result of various technological, regulatory and other changes, the telecommunications industry has become increasingly competitive. We face competition from (i) wireless telephone services, which is expected to increase as wireless providers continue to expand and improve their network coverage and offer enhanced services, (ii) cable television operators, competitive local exchange carriers ("CLECs") and Voice-over-Internet Protocol ("VoIP") service providers and (iii) resellers, sales agents and facilities-based providers that either use their own networks or lease parts of our networks. Over time, we expect to face additional local exchange competition from electric utility and satellite communications providers, municipalities and alternative networks or non-carrier systems designed to reduce demand for our switching or access services. The recent proliferation of companies offering integrated service offerings has intensified competition in Internet, long distance and data services markets, and we expect that competition will further intensify in these markets.

Our competitive position could be weakened in the future by strategic alliances or consolidation within the communications industry or the development of new technologies. Our ability to compete successfully will depend on how well we market our products and services and on our ability to anticipate and respond to various competitive and technological factors affecting the industry, including changes in regulation (which may affect us differently from our competitors), changes in consumer preferences or demographics, and changes in the product offerings or pricing strategies of our competitors.

Some of our current and potential competitors (i) offer a more comprehensive range of communications products and services, (ii) have market presence, engineering, technical and marketing capabilities and financial, personnel and other resources substantially greater than ours, (iii) own larger and more diverse networks, (iv) conduct operations or raise capital at a lower cost than us, (v) are subject to less regulation, (vi) offer greater online content

services or (vii) have substantially stronger brand names. Consequently, these competitors may be better equipped to charge lower prices for their products and services, to provide more attractive offerings, to develop and expand their communications and network infrastructures more quickly, to adapt more swiftly to new or emerging technologies and changes in customer requirements, and to devote greater resources to the marketing and sale of their products and services.

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Competition could adversely impact us in several ways, including (i) the loss of customers and market share, (ii) the possibility of customers reducing their usage of our services or shifting to less profitable services, (iii) reduced traffic on our networks, (iv) our need to expend substantial time or money on new capital improvement projects, (v) our need to lower prices or increase marketing expenses to remain competitive and (vi) our inability to diversify by successfully offering new products or services.

Changes in technology could harm us.

The communications industry is experiencing significant technological changes, particularly in the areas of VoIP, data transmission and electronic and wireless communications. The growing prevalence of electronic mail and similar digital communications continues to reduce demand for many of our products and services. Other changes in technology could result in the development of additional products or services that compete with or displace those offered by incumbent local exchange companies, or ILECs, or that enable current customers to reduce or bypass use of our networks. Several large electric utilities have announced plans to offer communications services that will compete with ILECs. Some of our competitors may enjoy network advantages that will enable them to provide services that have a greater market acceptance than ours. Technological change could also require us to expend capital or other resources in excess of currently contemplated levels. We cannot predict with certainty which technological changes will provide the greatest threat to our competitive position. We may not be able to obtain timely access to new technology on satisfactory terms or incorporate new technology into our systems in a cost effective manner, or at all. If we cannot develop new products to keep pace with technological advances, or if such products are not widely embraced by our customers, we could be adversely impacted.

We cannot assure you that our diversification efforts will be successful.

The telephone industry has recently experienced a decline in access lines and intrastate minutes of use, which, coupled with the other changes resulting from competitive, technological and regulatory developments, could materially adversely affect our core business and future prospects. As explained elsewhere in greater detail in our Annual Report on Form 10-K for the year ended December 31, 2009, our access lines (excluding the effect of acquisitions) have decreased over the last several years, and we expect this trend to continue. We have also earned less intrastate revenues in recent years due to reductions in intrastate minutes of use (partially due to the displacement of minutes of use by wireless, electronic mail, text messaging, arbitrage and other optional calling services). We believe that our intrastate minutes of use will continue to decline, although the magnitude of such decrease is uncertain. Likewise, similar reductions are occurring for interstate minutes of use.

Recently, we broadened our services and products by offering satellite television as part of our bundled product and service offerings. As noted in further detail below, our reliance on other companies and their networks to provide these services could constrain our flexibility and limit the profitability of these new offerings. We provide facilities-based digital video services to select markets and may initiate other new service or product offerings in the future. We anticipate that these new offerings will generate lower profit margins than many of our traditional services. Moreover, our new product or service offerings could be constrained by intellectual property rights held by others, or could subject us to the risk of infringement claims brought against us by others. For these and other reasons, we cannot assure you that our recent or future diversification efforts will be successful.

Future deterioration in our financial performance could adversely impact our credit ratings, our cost of capital and our access to the capital markets.

We may not be able to continue to grow through acquisitions.

We have traditionally sought growth largely through acquisitions of properties similar to those currently operated by us, such as those that we acquired from Embarq in 2009 and those that we have agreed to acquire from Qwest. However, no assurance can be given that additional properties will in the future be available for purchase on terms attractive to us, particularly if they are burdened by regulations, pricing plans or competitive pressures that are new or different from those historically applicable to our incumbent properties. Moreover, no assurance can be given that we will be able to arrange additional financing on terms acceptable to us or to obtain timely federal and state governmental approvals on terms acceptable to us, or at all.

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Our future results will suffer if we do not effectively adjust to changes in our business.

The above-described changes in our industry have placed a higher premium on marketing, technological, engineering and provisioning skills. Our acquisition of Embarq also changed the composition of our markets and product mix. Our future success depends, in part, on our ability to retrain our staff to acquire or strengthen skills necessary to address these changes, and, where necessary, to attract and retain new personnel that possess these skills.

Our future results will suffer if we do not effectively manage our expanded operations.

Following our pending acquisition of Qwest, we may continue to expand our operations through additional acquisitions, other strategic transactions, and new product and service offerings, some of which could involve complex technical, engineering, and operational challenges. Our future success depends, in part, upon our ability to manage our expansion opportunities, which pose substantial challenges for us to integrate new operations into our existing business in an efficient and timely manner, to successfully monitor our operations, costs, regulatory compliance and service quality, and to maintain other necessary internal controls. We cannot assure you that our expansion or acquisition opportunities will be successful, or that we will realize our expected operating efficiencies, cost savings, revenue enhancements, synergies or other benefits.

Our relationships with other communications companies are material to our operations and expose us to a number of risks.

We originate and terminate calls for long distance carriers and other interexchange carriers over our networks in exchange for access charges that represent a significant portion of our revenues. If these carriers go bankrupt or experience substantial financial difficulties, our inability to timely collect access charges from them could have a negative effect on our business and results of operations.

In addition, certain of our operations carry a significant amount of voice and data traffic for larger communications companies. As these larger communications companies consolidate or expand their networks, it is possible that they could transfer a significant portion of this traffic from our fiber network to their networks, which could have a negative effect on our business and results of operations.

We rely on certain reseller and sales agency arrangements with other companies to provide some of the services that we sell to our customers. If we fail to extend or renegotiate these arrangements as they expire from time to time or if these other companies fail to fulfill their contractual obligations, we may have difficulty finding alternative arrangements. In addition, as a reseller or sales agent, we do not control the availability, retail price, design, function, quality, reliability, customer service or branding of these products and services, nor do we directly control all of the marketing and promotion of these products and services. To the extent that these other companies make decisions that negatively impact our ability to market and sell our products and services, our business plans and reputation could be negatively impacted.

Network disruptions or system failures could adversely affect our operating results and financial condition.

To be successful, we will need to continue providing our customers with a high capacity, reliable and secure network. Some of the risks to our network and infrastructure include:

- power losses or physical damage to our access lines, whether caused by fire, adverse weather conditions (including those described immediately below), terrorism or otherwise
- capacity limitations
- software and hardware defects or malfunctions
- breaches of security, including sabotage, tampering, computer viruses and break-ins, and
- other disruptions that are beyond our control.

Disruptions or system failures may cause interruptions in service or reduced capacity for customers. If service is not restored in a timely manner, agreements with our customers or service standards set by state regulatory commissions could obligate us to provide credits or other remedies. If network security is breached, confidential information of our customers or others could be lost or misappropriated, and we may be required to expend additional resources modifying network security to remediate vulnerabilities. The occurrence of any disruption or system failure may result in a loss of business, increase expenses, damage our reputation, subject us to additional regulatory scrutiny or expose us to civil litigation and possible financial losses, any of which could have a material adverse effect on our results of operations and financial condition.

We face hurricane and other natural disaster risks, which can disrupt our operations and cause us to incur substantial additional capital costs.

A substantial number of our access lines are located in Florida, Alabama, Louisiana, Texas, North Carolina, and South Carolina, and our operations there are subject to the risks associated with severe tropical storms, hurricanes and tornadoes, including downed telephone lines, power-outages, damaged or destroyed property and equipment, and work interruptions.

Although we maintain property and casualty insurance on our plant (excluding our outside plant) and may under certain circumstances be able to seek recovery of some additional costs through increased rates, only a portion of our additional costs directly related to such hurricanes and natural disasters have historically been recoverable. We cannot predict whether we will continue to be able to obtain insurance for hazard-related damages or, if obtainable and carried, whether this insurance will be adequate to cover our losses. In addition, we expect any insurance of this nature to be subject to substantial deductibles and to provide for premium adjustments based on claims. Any future hazard-related costs and work interruptions could adversely affect our operations and our financial condition.

Any failure or inadequacy of our information technology infrastructure could harm our business.

The capacity, reliability and security of our information technology hardware and software infrastructure (including our billing systems) are important to the operation of our current business, which would suffer in the event of system failures. Likewise, our ability to expand and update our information technology infrastructure in response to our growth and changing needs is important to the continued implementation of our new service offering initiatives. Our inability to expand or upgrade our technology infrastructure could have adverse consequences, which could include the delayed implementation of new service offerings, increased acquisition integration costs, service or billing interruptions, and the diversion of development resources.

We rely on a limited number of key suppliers and vendors to operate our business.

We depend on a limited number of suppliers and vendors for equipment and services relating to our network infrastructure. Our local exchange carrier networks consist of central office and remote sites, all with advanced digital switches. Some of the digital switches were manufactured by Nortel, which is currently restructuring its operations and selling assets under the bankruptcy laws of Canada, the United States and the United Kingdom. If any of these suppliers experience interruptions or other problems delivering or servicing these network components on a timely basis, our operations could suffer significantly. To the extent that proprietary technology of a supplier is an integral component of our network, we may have limited flexibility to purchase key network components from alternative suppliers. In addition, we rely on a limited number of software vendors to support our business management systems. In the event it becomes necessary to seek alternative suppliers and vendors, we may be unable to obtain satisfactory replacement supplies or services on economically attractive terms, on a timely basis, or at all, which could increase costs or cause disruptions in our services.

We may not own or have a license to use all technology that may be necessary to expand our product offerings, either of which could adversely affect our business and profitability.

From time to time, we may need to obtain the right to use certain patents or other intellectual property from third parties to be able to offer new products and services. If we cannot license or otherwise obtain rights to use any required technology from a third party on reasonable terms, our ability to offer new IP-based products and services, including VoIP, or other new offerings may be restricted, made more costly or delayed. Our inability to implement IP-based or other new offerings on a cost-effective basis could impair our ability to successfully meet increasing competition from companies offering voice or integrated communications services. Our inability to deploy new technologies could also prevent us from successfully diversifying, modifying or bundling our service offerings and result in accelerated loss of access lines and revenues or otherwise adversely affect our business and profitability.

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Portions of our property, plant and equipment are located on property owned by third parties.

Over the past few years, certain utilities, cooperatives and municipalities in certain of the states in which we operate have requested significant rate increases for attaching our plant to their facilities. To the extent that these entities are successful in increasing the amount we pay for these attachments, our future operating costs will increase.

In addition, we rely on rights-of-way, co-location agreements and other authorizations granted by governmental bodies and other third parties to locate our cable, conduit and other network equipment on their respective properties. If any of these authorizations terminate or lapse, our operations could be adversely affected.

We depend on key members of our senior management team.

Our success depends largely on the skills, experience and performance of a limited number of senior officers. Competition for senior management in our industry is intense and we may have difficulty retaining our current senior managers or attracting new ones in the event of terminations or resignations. For a discussion of similar retention concerns relating to the Embarq merger and the pending Qwest merger, please see the risks described below under the headings "— Risks Related to our Acquisition of Embarq on July 1, 2009" and "Risks Relating to Our Pending Acquisition of Qwest."

We could be affected by certain changes in labor matters.

A substantial number of our employees are members of various bargaining units represented by two different unions. From time to time, our labor agreements with these unions lapse, and we typically negotiate the terms of new agreements. We cannot predict the outcome of these negotiations. We may be unable to reach new agreements, and union employees may engage in strikes, work slowdowns or other labor actions, which could materially disrupt our ability to provide services. In addition, new labor agreements may impose significant new costs on us, which could impair our financial condition or results of operations in the future. Moreover, our post-employment benefit offerings cause us to incur costs not faced by many of our competitors, which could ultimately hinder our competitive position.

#### Risks Relating to Our Pending Acquisition of Qwest

Our ability to complete the Qwest merger is subject to the receipt of consents and approvals from government entities, which may impose conditions that could have an adverse effect on us or could cause us to abandon the merger.

We are unable to complete the merger until we receive approvals from the FCC and various state governmental entities. In deciding whether to grant some of these approvals, the relevant governmental entity will make a determination of whether, among other things, the merger is in the public interest. Regulatory entities may impose certain requirements or obligations as conditions for their approval or in connection with their review.

The merger agreement may require us to accept conditions from these regulators that could adversely impact the combined company without us having the right to refuse to close the merger on the basis of those regulatory conditions. We can provide no assurance that we will obtain the necessary approvals or that any required conditions will not materially adversely effect us following the merger. In addition, we can provide no assurance that these conditions will not result in the abandonment of the merger.

Failure to complete the Qwest merger could negatively impact us.

If the merger is not completed, our ongoing businesses may be adversely affected and we will be subject to several risks, including the following:

- being required, under certain circumstances, to pay a termination fee of \$350 million;
- having to pay certain costs relating to the proposed merger, such as legal, accounting, financial advisor, filing, printing and mailing fees; and

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- diverting the focus of management from pursuing other opportunities that could be beneficial to us,

in each case, without realizing any of the benefits of having the merger completed.

The Qwest merger agreement contains provisions that could discourage a potential acquirer of CenturyLink or could result in any proposal being at a lower price than it might otherwise be.

The merger agreement contains "no shop" provisions that, subject to limited exceptions, restrict our ability to solicit, encourage, facilitate or discuss third-party proposals to acquire all or a significant part of CenturyLink. In some circumstances on termination of the merger agreement, we may be required to pay a termination fee to Qwest. These and other provisions in the Qwest merger agreement could discourage a potential acquirer that might have an interest in acquiring all or a significant part of CenturyLink from considering or proposing that acquisition, or might result in a potential acquirer proposing to pay a lower price than it might otherwise have proposed to pay because of the added expense of the termination fee that may become payable in certain circumstances.

The pendency of the Qwest merger could adversely affect our business and operations.

In connection with the pending Qwest merger, some of our customers or vendors may delay or defer decisions, which could negatively impact our revenues, earnings, cash flows and expenses, regardless of whether the merger is completed. Similarly, our current and prospective employees may experience uncertainty about their future roles with the combined company following the merger, which may materially adversely affect our ability to attract and retain key personnel during the pendency of the merger. In addition, due to operating covenants in the merger agreement, we may be unable, during the pendency of the merger, to pursue strategic transactions, undertake significant capital projects, undertake certain significant financing transactions and otherwise pursue other actions that are not in the ordinary course of business, even if such actions would prove beneficial.

We expect to incur substantial expenses related to the Qwest merger.

We expect to incur substantial expenses in connection with completing the Qwest merger and integrating Qwest's business, operations, networks, systems, technologies, policies and procedures of Qwest with ours. There are a large number of systems that must be integrated, including billing, management information, purchasing, accounting and finance, sales, payroll and benefits, fixed asset, lease administration and regulatory compliance. While we have assumed that a certain level of transaction and integration expenses would be incurred, there are a number of factors beyond our control that could affect the total amount or the timing of our integration expenses. Many of the expenses that will be incurred, by their nature, are difficult to estimate accurately at the present time. Moreover, we expect to commence these integration initiatives before we have completed a similar integration of our business with the business of Embarq, acquired in 2009, which could cause both of these integration initiatives to be delayed or rendered more costly or disruptive than would otherwise be the case. Due to these factors, the transaction and integration expenses associated with the Qwest merger could, particularly in the near term, exceed the savings that we expect to achieve from the elimination of duplicative expenses and the realization of economies of scale and cost savings related to the integration of the businesses following the completion of the merger. As a result of these expenses, we expect to take charges against our earnings before and after the completion of the merger. The charges taken after the merger are expected to be significant, although the aggregate amount and timing of such charges are uncertain at present.

Following the Qwest merger, the combined company may be unable to integrate successfully our business and Qwest's business and realize the anticipated benefits of the merger.

The Qwest merger involves the combination of two companies which currently operate as independent public companies. The combined company will be required to devote significant management attention and resources to integrating the business practices and operations of CenturyLink and Qwest. We may encounter difficulties in the integration process, including the following:

- the inability to successfully combine our business and Qwest's business in a manner that permits the combined company to achieve the cost savings and operating synergies anticipated to result from the merger, which would result in the anticipated benefits of the merger not being realized partly or wholly in the time frame currently anticipated or at all;
- lost sales and customers as a result of certain customers of either of the two companies deciding not to do business with the combined company;

- the complexities associated with managing the combined businesses out of several different locations and integrating personnel from the two companies, while at the same time attempting to provide consistent, high quality products and services under a unified culture;
- the additional complexities of combining two companies with different histories, regulatory restrictions, markets and customer bases, and initiating this process before we have fully completed the integration of our operations with those of Embarq;
- the failure to retain key employees of either of the two companies;
- potential unknown liabilities and unforeseen increased expenses or regulatory conditions associated with the merger; and
- performance shortfalls at one or both of the two companies as a result of the diversion of management's attention caused by completing the merger and integrating the companies' operations.

For all these reasons, you should be aware that it is possible that the integration process could result in the distraction of the combined company's management, the disruption of the combined company's ongoing business or inconsistencies in the combined company's products, services, standards, controls, procedures and policies, any of which could adversely affect our ability to maintain relationships with customers, vendors and employees or to achieve the anticipated benefits of the merger, or could otherwise adversely affect our business and financial results.

The Qwest merger will change the profile of our local exchange markets to include more large urban areas, with which we have limited operating experience.

Prior to the Embarq acquisition, we provided local exchange telephone services to predominantly rural areas and small to mid-size cities. Although Embarq's local exchange markets include Las Vegas, Nevada and suburbs of Orlando and several other large U.S. cities, we have operated these more dense markets only since mid-2009. Qwest's markets include Phoenix, Arizona, Denver, Colorado, Minneapolis — St. Paul, Minnesota, Seattle, Washington, Salt Lake City, Utah, and Portland, Oregon. Compared to our legacy markets, these urban markets, on average, are substantially denser and have experienced greater access line losses in recent years. While we believe our strategies and operating models developed serving rural and smaller markets can successfully be applied to larger markets, we can not assure you of this. Our business, financial performance and prospects could be harmed if our current strategies or operating models cannot be successfully applied to larger markets following the merger, or are required to be changed or abandoned to adjust to differences in these larger markets.

Following the Qwest merger, we may be unable to retain key employees.

Our success after the merger will depend in part upon our ability to retain key Qwest and CenturyLink employees. Key employees may depart either before or after the merger because of issues relating to the uncertainty and difficulty of integration or a desire not to remain with us following the merger. Accordingly, no assurance can be given that we will be able to retain key employees to the same extent that we or Qwest have been able to in the past.

Following the Qwest merger, we may need to conduct branding or rebranding initiatives that are likely to involve substantial costs and may not be favorably received by customers.

We plan to consult with Qwest about how and under what brand names to market the various legacy communications services of CenturyLink and Qwest. Prior to the merger, each of us will each continue to market our respective products and services using the "CenturyLink" and "Qwest" brand names and logos. Following the merger, we may discontinue use of either or both of the "CenturyLink" or "Qwest" brand names and logos in some or all of the markets of the combined company. As a result, we expect to incur substantial capital and other costs in rebranding the combined company's products and services in those markets that previously used a different name, and may incur substantial write-offs associated with the discontinued use of a brand name. The failure of any of these initiatives could adversely affect our ability to attract and retain customers after the merger, resulting in reduced revenues.

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Any adverse outcome of the KPNQwest litigation or other material litigation of Qwest or CenturyLink could have a material adverse impact on our financial condition and operating results following the Qwest merger.

As described in further detail in Qwest's reports filed with the SEC, the pending KPNQwest litigation presents material and significant risks to Qwest, and, following the merger, to the combined company. In the aggregate, the plaintiffs in these matters have sought billions of dollars in damages.

There are other material proceedings pending against Qwest and CenturyLink, as described in their respective reports filed with the SEC. Depending on their outcome, any of these matters could have a material adverse effect on the financial position or operating results of Qwest, CenturyLink or, following the merger, the combined company. We can give you no assurances as to the impact of these matters on our operating results or financial condition.

Counterparties to certain significant agreements with Qwest may exercise contractual rights to terminate such agreements following the Qwest merger.

Qwest is a party to certain agreements that give the counterparty a right to terminate the agreement following a "change in control" of Qwest. Under most such agreements, the Qwest merger will constitute a change in control of Qwest and therefore the counterparty may terminate the agreement upon the closing of the merger. Qwest has agreements subject to such termination provisions with significant customers, major suppliers and providers of services where Qwest has acted as reseller or sales agent. In addition, certain Qwest customer contracts, including those with state or federal government agencies, allow the customer to terminate the contract at any time for convenience, which would allow the customer to terminate its contract before, at or after the closing of the merger. Any such counterparty may request modifications of their respective agreements as a condition to their agreement not to terminate. There is no assurance that such agreements will not be terminated, that any such terminations will not result in a material adverse effect, or that any modifications of such agreements to avoid termination will not result in a material adverse effect.

We may be unable to obtain security clearances necessary to perform certain Qwest government contracts.

Certain Qwest legal entities and officers have security clearances required for Qwest's performance of customer contracts with various government entities. Following the merger, it may be necessary for us to obtain comparable security clearances. If we or our officers are unable to qualify for such security clearances, we may not be able to continue to perform such contracts.

We cannot assure you whether, when or in what amounts we will be able to use Qwest's net operating losses following the Qwest merger.

As of June 30, 2010, Qwest had \$5.2 billion of net operating losses, or NOLs, which for federal income tax purposes can be used to offset future taxable income, subject to certain limitations under Section 382 of the Code and related regulations. Our ability to use these NOLs following the Qwest merger may be further limited by Section 382 if Qwest is deemed to undergo an ownership change as a result of the merger or we are deemed to undergo an ownership change following the merger, either of which could potentially restrict use of a material portion of the NOLs. Determining the limitations under Section 382 is technical and highly complex. Although both companies, based on their review to date, currently believe that Qwest will not undergo an

ownership change as a result of the merger, neither company has definitively completed the analysis necessary to confirm this. Even if it is ultimately determined that Qwest did not undergo an ownership change, utilization of the NOLs will be subject to the separate return limitation rules and will be restricted to application against the taxable income generated by the Qwest group. Moreover, issuances or sales of our stock following the merger (including certain transactions outside of our control) could result in an ownership change under Section 382. For these and other reasons, we cannot assure you that we will be able to use the NOLs after the merger in the amounts we project.

The pending Qwest merger raises other risks.

For information on other risks raised by the pending Qwest merger, please see (i) the risks described below under the heading “— Other Risks” and (ii) the joint proxy statement – prospectus filed by us with the SEC on July 19, 2010.

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#### Risks Related to our Acquisition of Embarq on July 1, 2009

We have not yet fully integrated Embarq’s operations into our operations, which involves several risks.

We continue to incur substantial expenses in connection with integrating the business, operations, networks, systems, technologies, policies and procedures of Embarq with ours, which will likely result in us continuing to take significant charges against earnings in future quarters. We cannot assure you that we will be able to successfully integrate our legacy business with Embarq’s business, or that we will be able to retain key employees affected by the Embarq merger. For more information on these risks, please see (i) the risk factors included in Item 1A of our Annual Report on Form 10-K for the year ended December 31, 2009 and (ii) the risks described above under the heading “— Risks Relating to Our Pending Acquisition of Qwest” that discuss the costs and uncertainties associated with integrating Qwest’s operations into ours.

In connection with completing the Embarq merger, we launched branding initiatives that may not be favorably received by customers.

Upon completion of the merger, we changed our brand name to CenturyLink. We have incurred substantial capital and operating costs in re-branding our products and services. There is no assurance that we will be able to achieve name recognition or status under our new brand that is comparable to the recognition and status previously enjoyed. The failure of these initiatives could adversely affect our ability to attract and retain customers after the merger, resulting in reduced revenues.

In connection with approving the Embarq merger, the Federal Communications Commission has imposed conditions that could increase our future capital costs and limit our operating flexibility.

In connection with approving the Embarq merger, the FCC issued a publicly-available order that imposed a comprehensive set of conditions on our operations over periods ranging from one to three years following the closing date. Among other things, these conditions commit us (i) to make broadband service available to all of our residential and single line business customers within three years of the closing, (ii) to meet various targets regarding the speed of our broadband services, and (iii) to enhance the wholesale service levels in our legacy markets to match the service levels in Embarq’s markets. Although most of these commitments largely correspond to our business strategies, they could increase our overall future capital or operating costs or limit our flexibility to deploy capital in response to changing market conditions. Moreover, if for any reason we fail to meet any of these commitments, the FCC could assess penalties or fines or impose additional orders regulating our operations.

In connection with completing the Embarq merger, we assumed various contingent liabilities and a sizable underfunded pension plan of Embarq, which could negatively impact our future financial position or performance.

Upon consummating the merger, Embarq became our wholly-owned subsidiary and remains responsible for all of its pre-closing contingent liabilities, including Embarq’s previously-disclosed risks arising under its tax sharing agreement with Sprint Nextel Corporation, its retiree benefit litigation, and various environmental claims. Embarq also remains responsible for benefits under its existing qualified defined benefit pension plan, which as of December 31, 2009 was in an underfunded position. If any of these matters give rise to material liabilities, our consolidated operating results or financial position will be negatively affected. Additional information regarding these risks is available in (i) Items 3 and 8 of our Annual Report on Form 10-K for the year ended December 31, 2009 and (ii) the periodic reports filed by Embarq with the SEC through the date of the merger.

#### Risks Related to Our Regulatory Environment

Our revenues could be materially reduced or our expenses materially increased by changes in state or federal regulations.

The majority of our revenues are substantially dependent upon regulations which, if changed, could result in material revenue reductions. Laws and regulations applicable to us and our competitors have been and are likely to continue to be subject to ongoing changes and court challenges, which could also affect our financial performance.

Risk of loss or reduction of network access charge revenues or support fund payments. A significant portion of our revenues is derived from access charge revenues that are paid to us by long distance carriers based largely on rates set by federal and state regulatory bodies. Interexchange carriers have filed complaints in several of our operating states requesting lower intrastate access rates. Several state public service commissions are investigating intrastate access rates and the ultimate outcome and impact of such investigations are uncertain.

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The FCC regulates tariffs for interstate access and subscriber line charges, both of which are components of our revenue. The FCC has been considering comprehensive reform of its intercarrier compensation rules for several years, including proposals included in its recently-released National Broadband Plan that, as proposed, are likely to reduce network access payments. Any reform eventually adopted by the FCC will likely involve significant changes in the access charge system and could potentially result in a significant decrease or elimination of access charges altogether. In addition, we could be harmed if carriers that use our access services become financially distressed or bypass our networks, either due to changes in regulation or other factors. Furthermore, access charges currently paid to us could be diverted to competitors who enter our markets or expand their operations, either due to changes in regulation or otherwise.

The FCC has been evaluating potential changes to special access rates and regulation for several years. This issue could also be impacted by the outcome of the National Broadband Plan. Since a substantial portion of our access revenues is derived from special access, we could be harmed if adverse special access regulation is adopted by the FCC.

The FCC and Congress may take actions that would impact our access to video programming and pricing, which could impact our ability to continue to expand our video business and impact our competitive position in our existing video markets.

We receive revenues from the federal Universal Service Fund (“USF”), and, to a lesser extent, intrastate support funds. These governmental programs are reviewed and amended from time to time, and we cannot provide assurance that they will not be changed or impacted in a manner adverse to us. For several years, the FCC and the federal-state joint board considered comprehensive reforms of the federal USF contribution and distribution

rules. During this period, various parties have objected to the size of the USF or questioned the continued need to maintain the program in its current form. Over the past few years, high cost support fund payments to our operating subsidiaries have decreased due to increases in the nationwide average cost per loop factor used to determine payments to program participants, as well as declines in the overall size of the high cost support fund. In addition, the number of eligible telecommunications carriers receiving support payments from this program has increased substantially in recent years, which, coupled with other factors, has placed additional financial pressure on the amount of money that is available to provide support payments to all eligible recipients, including us.

The FCC's National Broadband Plan released on March 16, 2010 seeks comprehensive changes in federal communications regulations and programs that could, among other things, result in lower USF and access revenues for several of our local exchange companies. At this stage, we cannot predict the ultimate outcome of this plan or provide any assurances that its implementation will not have a material adverse effect on our business, operating results or financial condition.

**Risks posed by state regulations.** We are also subject to the authority of state regulatory commissions which have the power to regulate intrastate rates and services, including local, in-state long-distance and network access services. The limited number of our ILECs that continue to be subject to "rate of return" regulation for intrastate purposes remain subject to the powers of state regulatory commissions to conduct earnings reviews and reduce our service rates. Our ILECs governed by alternative regulatory plans could also under certain circumstances be ordered to reduce rates or could experience rate reductions following the lapse of plans currently in effect. Our business could also be materially adversely affected by the adoption of new laws, policies and regulations or changes to existing state regulations. In particular, we cannot assure you that we will succeed in obtaining or maintaining all requisite state regulatory approvals for our operations without the imposition of adverse conditions on our business that impose additional costs or limit our revenues.

**Risks posed by costs of regulatory compliance.** Regulations continue to create significant compliance costs for us. Challenges to our tariffs by regulators or third parties or delays in obtaining certifications and regulatory approvals could cause us to incur substantial legal and administrative expenses, and, if successful, such challenges could adversely affect the rates that we are able to charge our customers. Our business also may be impacted by legislation and regulation imposing new or greater obligations related to regulations or laws related to bolstering homeland security, increasing disaster recovery requirements, minimizing environmental impacts, enhancing privacy, or addressing other issues that impact our business, including the Communications Assistance for Law Enforcement Act (which requires communications carriers to ensure that their equipment, facilities, and services are able to facilitate authorized electronic surveillance), and laws governing local number portability and customer proprietary network information requirements. We expect our compliance costs to increase if future laws or regulations continue to increase our obligations to assist other governmental agencies.

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Regulatory changes in the communications industry could adversely affect our business by facilitating greater competition against us.

The Telecommunications Act of 1996 provides for significant changes and increased competition in the communications industry, including the local and long distance telephone industries. This Act and the FCC's implementing regulations remain subject to judicial review and additional rulemakings, thus making it difficult to predict what effect the legislation will ultimately have on us and our competitors. Several regulatory and judicial proceedings addressing communications issues have recently concluded, are underway or may soon be commenced. Moreover, certain communities nationwide have expressed an interest in establishing municipal telephone utilities that would compete for customers. Finally, federal broadband stimulus projects authorized by Congress in 2009 and the above-described National Broadband Plan announced in early 2010 may adversely impact us. We cannot predict the outcome of these developments, nor can we assure that these changes will not have a material adverse effect on us or our industry.

We are subject to significant regulations that limit our flexibility.

As a diversified full service ILEC, we have traditionally been subject to significant regulation that does not apply to many of our competitors. For instance, unlike many of our competitors, we are subject to federal mandates to share facilities, file and justify tariffs, maintain certain accounts and file reports, and state requirements that obligate us to maintain service standards and limit our ability to change tariffs in a timely manner. This regulation imposes substantial compliance costs on us and restricts our ability to change rates, to compete and to respond rapidly to changing industry conditions. Although newer alternative forms of regulation permit us greater freedoms in several states in which we operate, they nonetheless typically impose caps on the rates that we can charge our customers. As our business becomes increasingly competitive, regulatory disparities between us and our competitors could impede our ability to compete. Litigation and different objectives among federal and state regulators could create uncertainty and impede our ability to respond to new regulations. Moreover, changes in tax laws, regulations or policies could increase our tax rate, particularly if state regulators continue to search for additional revenue sources to address budget shortfalls. We are unable to predict the future actions of the various regulatory bodies that govern us, but such actions could materially affect our business.

We are subject to franchising requirements that could impede our expansion opportunities.

We may be required to obtain from municipal authorities operating franchises to install or expand facilities. Some of these franchises may require us to pay franchise fees. These franchising requirements generally apply to our fiber transport and CLEC operations, and to our emerging switched digital television and wireless broadband businesses. These requirements could delay us in expanding our operations or increase the costs of providing these services.

We will be exposed to risks arising out of recent legislation affecting U.S. public companies, including risks relating to evaluations of controls required by Section 404 of the Sarbanes-Oxley Act.

Changing laws, regulations and standards relating to corporate governance and public disclosure, including the Sarbanes-Oxley Act and the Dodd-Frank Wall Street Reform and Consumer Protection Act, and related regulations implemented by the SEC, the New York Stock Exchange and the Public Company Accounting Oversight Board, are increasing legal and financial compliance costs and making some activities more time consuming. Any future failure to successfully or timely complete annual assessments of our internal controls required by Section 404 of the Sarbanes-Oxley Act could subject us to sanctions or investigation by regulatory authorities. Any such action could adversely affect our financial results or investors' confidence in us, and could cause our stock price to fall. If we fail to maintain effective controls and procedures, we may be unable to provide financial information in a timely and reliable manner, which could in certain instances limit our ability to borrow or raise capital.

For a more thorough discussion of the regulatory issues that may affect our business, see Item 1 of our Annual Report on Form 10-K for the year ended December 31, 2009.

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#### Other Risks

We have a substantial amount of indebtedness and may need to incur more in the future.

We have a substantial amount of indebtedness, which could have material adverse consequences for us, including (i) hindering our ability to adjust to changing market, industry or economic conditions, (ii) limiting our ability to access the capital markets to refinance maturing debt or to fund acquisitions or emerging businesses, (iii) limiting the amount of free cash flow available for future operations, acquisitions, dividends, stock repurchases or other uses, (iv) making us more vulnerable to economic or industry downturns, including interest rate increases, and (v) placing us at a competitive disadvantage to



those of our competitors that have less indebtedness.

As a result of assuming Qwest's indebtedness in connection with the pending Qwest merger, we will become more leveraged. This could reduce our credit ratings and thereby raise our borrowing costs.

In connection with executing our business strategies following the Qwest merger, we expect to continue to evaluate the possibility of acquiring additional communications assets and making strategic investments, and we may elect to finance future acquisitions by incurring additional indebtedness. Moreover, to respond to competitive challenges, we may be required to raise substantial additional capital to finance new product or service offerings. Our ability to arrange additional financing will depend on, among other factors, our financial position and performance, as well as prevailing market conditions and other factors beyond our control. We cannot assure you that we will be able to obtain additional financing on terms acceptable to us or at all. If we are able to obtain additional financing, our credit ratings could be adversely affected, which could further raise our borrowing costs and further limit our future access to capital and our ability to satisfy our debt obligations.

Adverse changes in the value of assets or obligations associated with our employee benefit plans could negatively impact our financial results or financial position.

We maintain one or more qualified pension plans, non-qualified pension plans and post-retirement benefit plans, several of which are currently underfunded. Adverse changes in interest rates or market conditions, among other assumptions and factors, could cause a significant increase in the benefit obligations under these plans or a significant decrease in the value of plan assets. With respect to the qualified pension plans, adverse changes could require us to contribute a material amount of cash to the plans or could accelerate the timing of any required cash payments. The process of calculating benefit obligations is complex. The amount of required contributions to these plans in future years will depend on earnings on investments, prevailing discount rates, changes in the plans and funding laws and regulations. Any future material cash contributions could have a negative impact on our financial results or financial position.

We have a significant amount of goodwill on our balance sheet. If our goodwill becomes impaired, we may be required to record a significant charge to earnings and reduce our stockholders' equity.

Under generally accepted accounting principles, goodwill is not amortized but instead is reviewed for impairment on an annual basis or more frequently whenever events or circumstances indicate that its carrying value may not be recoverable. If our goodwill is determined to be impaired in the future, we may be required to record a significant, non-cash charge to earnings during the period in which the impairment is determined.

We cannot assure you that we will be able to continue paying dividends at the current rate.

We plan to continue our current dividend practices. However, you should be aware that these practices are subject to change for reasons that may include any of the following factors:

- we may not have enough cash to pay such dividends due to changes in our cash requirements, capital spending plans, cash flow or financial position;
- decisions on whether, when and in which amounts to make any future distributions will remain at all times entirely at the discretion of our board of directors, which reserves the right to change our dividend practices at any time and for any reason;
- the effects of regulatory reform, including any changes to intercarrier compensation, Universal Service Fund or special access rules;

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- our desire to maintain or improve the credit ratings on our senior debt;
- the amount of dividends that we may distribute to our shareholders is subject to restrictions under Louisiana law and is limited by restricted payment and leverage covenants in our credit facilities and, potentially, the terms of any future indebtedness that we may incur; and
- the amount of dividends that our subsidiaries may distribute to CenturyLink is subject to restrictions imposed by state law, restrictions that have been or may be imposed by state regulators in connection with obtaining necessary approvals for the Embarq merger and pending Qwest merger, and restrictions imposed by the terms of credit facilities applicable to certain subsidiaries and, potentially, the terms of any future indebtedness that these subsidiaries may incur.

Our Board of Directors is free to change or suspend our dividend practices at any time. Our common shareholders should be aware that they have no contractual or other legal right to dividends.

Our current dividend practices could limit our ability to pursue growth opportunities.

The current practice of our Board of Directors to pay an annual \$2.90 per common share dividend reflects an intention to distribute to our shareholders a substantial portion of our free cash flow. As a result, we may not retain a sufficient amount of cash to finance a material expansion of our business in the future. In addition, our ability to pursue any material expansion of our business, through acquisitions or increased capital spending, will depend more than it otherwise would on our ability to obtain third party financing. We cannot assure you that such financing will be available to us at all, or at an acceptable cost.

As a holding company, we rely on payments from our operating companies to meet our obligations.

As a holding company, substantially all of our income and operating cash flow is dependent upon the earnings of our subsidiaries and the distribution of those earnings to, or upon loans or other payments of funds by those subsidiaries to, us. As a result, we rely upon our subsidiaries to generate the funds necessary to meet our obligations, including the payment of amounts owed under our long-term debt. Our subsidiaries are separate and distinct legal entities and have no obligation to pay any amounts owed by us or, subject to limited exceptions for tax-sharing purposes, to make any funds available to us to repay our obligations, whether by dividends, loans or other payments. Certain of our subsidiaries may be restricted under loan agreements or regulatory orders from transferring funds to us, including certain restrictions on the amount of dividends that may be paid to us. Moreover, our rights to receive assets of any subsidiary upon its liquidation or reorganization will be effectively subordinated to the claims of creditors of that subsidiary, including trade creditors. The notes to our consolidated financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2009 describe these matters in additional detail.

Changes in the tax rate on dividends could reduce demand for our stock.

The current maximum U.S. tax rate of 15% on qualified dividends is scheduled to rise to a maximum rate of 39.6% on January 1, 2011 if Congress does not otherwise act. An increase in the U.S. tax rate on dividends could reduce demand for our stock, which could potentially depress its trading price.

Our agreements and organizational documents and applicable law could limit another party's ability to acquire us.

Our articles of incorporation provide for a classified board of directors, which limits the ability of an insurgent to rapidly replace the board. In addition, a number of other provisions in our agreements and organizational documents and various provisions of applicable law may delay, defer or prevent a future takeover of CenturyLink unless the takeover is approved by our Board of Directors. This could deprive our shareholders of any related takeover premium.

We face other risks.

The list of risks above is not exhaustive, and you should be aware that we face various other risks discussed in this or other reports, proxy statements or documents filed by us or Embargo with the SEC.

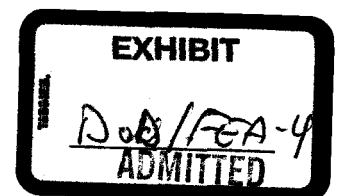
**QWEST AND CENTURYLINK**  
**FCC ARMIS Service Quality Reports for 2009**  
**(All Qwest operations as ILEC, most CenturyLink operations in U.S.)**

**LOCAL SERVICES**

	<b>Qwest</b>	<b>CenturyLink</b>
<b>Average Installation Intervals in Days</b>		
Business Lines	0.0	1.6
All Lines	0.2	1.6
<b>Percent of Local Installation Commitments not Met</b>		
Business Lines	0.25 %	3.46 %
All Lines	0.65 %	4.87 %
<b>Out of Service Repair Intervals in Hours</b>		
Business Lines	17.7	19.0
All Lines	15.6	16.7
<b>Repeat Out of Service Trouble Reports as a Percentage of Initial Out of Service Trouble Reports</b>		
Business Lines	18.2 %	18.2 %
All Lines	16.9 %	16.2 %
<b>State Complaints per 1,000,000 Lines</b>		
Business Lines	90	10
All Lines	26	3
<b>Total Trouble Reports per Month per 100 Lines</b>		
Business Lines	0.98	1.65
All Lines	0.50	0.67

**SPECIAL ACCESS SERVICES**

	<b>Qwest</b>	<b>CenturyLink</b>
<b>Average Installation Intervals in Days</b>	4.6	10.6
<b>Out of Service Repair Intervals in Hours</b>	2.9	3.8
<b>Percentage of Special Access Commitments not Met</b>	2.0 %	9.1 %
<b>Total Trouble Reports per Circuit</b>	0.41	2.08



**QWEST AND CENTURYLINK**  
**FCC ARMIS Service Quality Reports for 2009**  
**(All Qwest operations as ILEC, most CenturyLink operations in U.S.)**

**LOCAL SERVICES**

	<b>Qwest</b>	<b>Embarq</b>
Average Installation Intervals in Days		
Business Lines	0.2	1.6
All Lines	0.0	1.6
Percent of Local Installation Commitments not Met		
Business Lines	0.65 %	4.87 %
All Lines	0.25 %	3.46 %
Out of Service Repair Intervals in Hours		
Business Lines	15.6	16.7
All Lines	17.7	19.0
Repeat Out of Service Trouble Reports as a Percentage of Initial Out of Service Trouble Reports		
Business Lines	16.9 %	16.6 %
All Lines	18.2 %	18.2 %
State Complaints per 1,000,000 Lines		
Business Lines	26	3
All Lines	90	10
Total Trouble Reports per Month per 100 Lines		
Business Lines	0.50	0.67
All Lines	0.98	1.65

**SPECIAL ACCESS SERVICES**

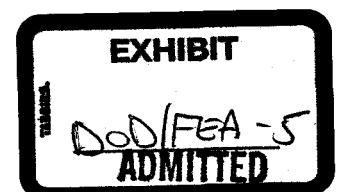
	<b>Qwest</b>	<b>Embarq</b>
Average Installation Intervals in Days	4.6	10.6
Out of Service Repair Intervals in Hours	2.9	3.8
Percentage of Special Access Commitments not Met	2.0 %	9.1 %
Total Trouble Reports per Circuit	0.4	2.2



Notes: Data are from FCC EAFS Preset Reports. Data on "Local Services" are from Service Quality Reports for each of the six measures. Data on "Special Access Services" are from Formatted ARMIS Data, Report 43-05, Table I, All Special Access. In all cases, data in the column labeled Qwest are the EAFS "Qwest Corporation Consolidated Aggregate" for Large ILEC Study Areas; and data in the column labeled Embarq are the EAFS "Embarq Local Operating Companies Consolidated Aggregate" for Mid-Sized ILEC Study Areas.

**Corrections to Pre-filed Initial Testimony and Exhibits of Charles W. King  
on Behalf of DoD/FEA**

1. Page 12, line 6 -- change "than" to "that"
2. Page 14, line 17 -- change "Comcast" to "Cox"
3. Replace DoD/FEA Exhibit 4 with DoD/FEA Revised Exhibit 4 which incorporates the following revisions:
  - Reverse the line headings, that is, the "Business Lines" in the earlier version should be labeled "All Lines," and the "All Lines" should be labeled "Business Lines."
  - Some of the entries under "Special Access Lines" were incorrectly transcribed from the Federal Communications Commission ("FCC") reports, and the correct numbers are now inserted.
  - The heading "CenturyLink" should read "Embarq" because the merger of those two companies did not occur until June of 2009, and the metrics shown are those of Embarq.



Joint Applicants-DoD/FEA Joint Exhibit 1

BEFORE THE ARIZONA CORPORATION COMMISSION

KRISTIN K. MAYES  
Chairman  
GARY PIERCE  
Commissioner  
PAUL NEWMAN  
Commissioner  
SANDRA D. KENNEDY  
Commissioner  
BOB STUMP  
Commissioner

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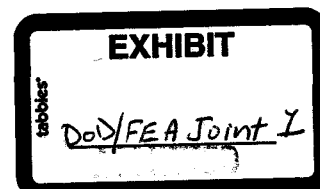
ARIZ CORP COMMISSION  
DOCKET CONTROL

JOINT NOTICE AND APPLICATION OF  
QWEST CORPORATION, QWEST  
COMMUNICATIONS COMPANY, LLC,  
QWEST LD CORP., EMBARQ  
COMMUNICATIONS, INC. D/B/A  
CENTURY LINK COMMUNICATIONS,  
EMBARQ PAYPHONE SERVICES, INC.  
D/B/A CENTURYLINK, AND  
CENTURYTEL SOLUTIONS, LLC FOR  
APPROVAL OF THE PROPOSED  
MERGER OF THEIR PARENT  
CORPORATIONS QWEST  
COMMUNICATIONS INTERNATIONAL  
INC. AND CENTURYTEL, INC.

DOCKET NO. T-01051B-10-0194  
T-03902A-10-0194  
T-02811B-10-0194  
T-20443A-10-0194  
T-04190A-10-0194  
T-03555A-10-0194

SETTLEMENT AGREEMENT AND STIPULATION

- 1 This Settlement Agreement and Stipulation ("Agreement") is entered into between Qwest Corporation, Qwest Communications Company, LLC, and Qwest LD Corp ("collectively, Qwest"), and Embarq Communications, Inc. D/B/A CenturyLink Communications, Embarq Payphone Services, Inc. D/B/A CenturyLink, and CenturyTel Solutions, Inc. (collectively, "CenturyLink") (collectively, Qwest and CenturyLink are "Applicants") and the U.S. Department of Defense and All Other Federal Agencies ("DoD/FEA") (collectively "Parties" or individually a "Party")



### **A. Background**

2 On May 13, 2010, the Applicants filed with the Arizona Corporation Commission (“Commission”) an Application for approval of the indirect transfer of control of Qwest and its affiliates (the “merger” or “transaction”). The Applicants submitted Testimony on May 24, 2010, and October 27, 2010. DoD/FEA submitted Initial Testimony of Charles W. King, on Behalf of The Department of Defense and All Other Federal Executive Agents on September 27, 2010. In its testimony, DoD/FEA raised a number of issues in connection with the proposed transaction. The Parties subsequently engaged in settlement discussions to address DoD/FEA’s contested issues and now enter voluntarily into this Agreement to resolve all contested issues among the Parties in the proceeding and to expedite the orderly disposition of this proceeding.

### **B. Nature of Agreement**

3 The Parties agree that this Agreement resolves all contested issues among them in this docket, that the merger with this associated Agreement is in the public interest, and thus that the Commission should approve the merger with this associated Agreement. The Parties further understand that DoD/FEA and the Applicants have agreed to the terms of this Agreement based upon the Commission’s approval of the merger with this associated Agreement.

### **C. Positions Are Not Conceded**

4 In reaching this Agreement, no Party accedes to any particular argument made by any other Party.



**D. Agreed Conditions on Approval of the Transaction**

- 5 The conditions agreed upon by the Parties are set forth in Attachment 1 to this Agreement. All conditions in Attachment 1 apply for three years following closing of the transaction unless otherwise specifically noted in the condition in Attachment 1.

**E. Effective Date**

- 6 The effective date of the Agreement is the date the transaction closes. Notwithstanding the effective date of the Agreement as a whole, Sections G and H below, which require the Parties to support the Agreement before the Commission and govern publicity regarding the Agreement, are effective on the execution date of the Agreement. The execution date of the Agreement is the date of the latest signature.
- 7 If the Commission rejects the Agreement, the Agreement shall terminate, and the parties respectfully request that the Commission will instead enter an order on all contested issues. In the event the Commission accepts the Agreement upon conditions not proposed herein, or alters or rejects any portion of the Agreement, the procedures set forth in Section I below shall apply.
- 8 If the Applicants terminate their merger agreement or otherwise decide not to pursue the transaction then this Agreement shall be void.

**F. Filing of the Agreement**

- 9 The Applicants will file this Agreement, and the Parties hereby state that the Agreement is the complete and final resolution of all contested issues raised by DoD/FEA in this proceeding. The Parties agree that the DoD/FEA will submit its pre-filed testimony into

the administrative record; however, the Parties also agree that the DoD/FEA pre-filed testimony is deemed superseded by this Agreement. DoD/FEA will offer its pre-filed testimonies into the administrative record by stipulation through an affidavit, unless requested or directed otherwise by the Commission. This affidavit shall state that the DoD/FEA testimonies are superseded by this Agreement and that the merger with this associated Agreement is in the public interest.

#### **G. Support of the Agreement**

- 10 All Parties agree to use their best efforts to support the Agreement as a settlement of all contested issues in the pending proceeding. At a minimum, the Parties will provide supporting witnesses to: (a) sponsor the Agreement at a Commission hearing if so required; (b) state that the Agreement resolves the Parties' contested issues in this proceeding; (c) provide such other evidence or briefing that the Commission may require; and (d) state that the merger with this associated Agreement is in the public interest. No Party to this Agreement or their agents, employees, consultants or attorneys will engage in any advocacy contrary to this Agreement or support any other party's proposed conditions to the merger or opposition to this Agreement before the Commission or otherwise in this proceeding, excluding settlements between the Applicants and other parties.

#### **H. Publicity**

- 11 All Parties agree: (1) to provide all other Parties the right to review and approve in advance of publication any and all announcements or news releases that any other Party

intends to make about the Agreement (with the right of review to include a reasonable opportunity to request changes to the text of such announcements) and (2) to include in any news release or announcement a statement that in this jurisdiction the merger with this associated Agreement is in the public interest.

**I. Procedure if the Commission Alters or Rejects any Portion of the Agreement**

- 12 In the event the Commission alters or rejects this Agreement, the Parties propose that the Commission decide all contested issues as explained in Section E. In the event the Commission accepts the Agreement upon conditions not proposed herein, each Party reserves its right, upon written notice to the Commission and the parties within five (5) business days of the Commission's Order, to state its rejection of the conditions and withdrawal from the Agreement with the effect of respectfully requesting the Commission decide all contested issues as provided above.

**J. The Agreement as Precedent**

- 13 The Parties have entered into this Agreement to avoid further expense, inconvenience, uncertainty and delay. Nothing in this Agreement (or any testimony, presentation or briefing in this proceeding) shall be asserted or deemed to mean that a Party agreed with or adopted another Party's legal or factual assertions in this proceeding. The limitations in this paragraph shall not apply to any proceeding to enforce the terms of this Agreement or any Commission order adopting this Agreement in full.
- 14 Because this Agreement represents a compromise position of the Parties in this Commission's proceeding, the Parties agree that no conduct, statements or documents

disclosed in the negotiation of the Agreement shall be admissible as evidence in this or any other proceeding. This paragraph does not apply to non-privileged, publicly available documents.

- 15 Furthermore, because this Agreement represents a compromise position of the Parties in this Commission's proceeding, no Party may use this agreement or the testimonies or pleadings and briefs of any other Party in this proceeding as precedent on the appropriateness of the positions of that other Party in any other proceeding.

#### **K. Entire Agreement**

- 16 The Parties acknowledge that this Agreement is the product of negotiations and compromise and shall not be construed against any Party on the basis that it was the drafter of any or all portions of this Agreement. This Agreement constitutes the Parties' entire agreement on all matters set forth herein, and it supersedes any and all prior oral and written understandings or agreements on such matters that previously existed or occurred in this proceeding, and no such prior understanding or agreement or related representations shall be relied upon by the Parties.

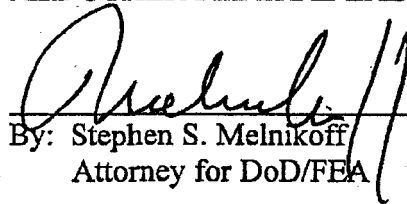
#### **L. Manner of Execution**

- 17 This Agreement is considered executed when all Parties sign the Agreement. A designated and authorized representative may sign the Agreement on a Party's behalf. The Parties may execute this Agreement in counterparts. If the Agreement is executed in counterparts, all counterparts shall constitute one agreement. A faxed or electronic transmission signature page containing the signature of a Party is acceptable as an

original signature page signed by that Party. Each Party shall indicate the date of its signature on the Agreement.

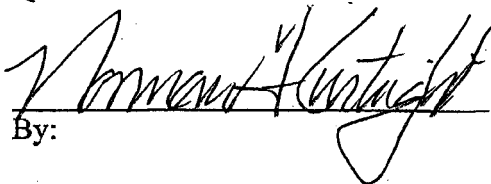
DATED this 5<sup>th</sup> day of November 2010

U.S. DEPARTMENT OF DEFENSE AND  
ALL OTHER FEDERAL EXECUTIVE AGENCIES

  
By: Stephen S. Melnikoff  
Attorney for DoD/FEA

5 November 2010  
Date

QWEST

  
By:

Nov. 5, 2010  
Date

CENTURYLINK

\_\_\_\_\_  
By:

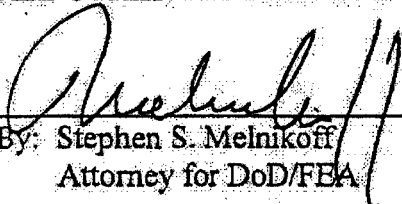
\_\_\_\_\_  
Date

original signature page signed by that Party. Each Party shall indicate the date of its signature on the Agreement.

---

DATED this 5<sup>th</sup> day of November 2010

U.S. DEPARTMENT OF DEFENSE AND  
ALL OTHER FEDERAL EXECUTIVE AGENCIES

  
By: Stephen S. Melnikoff  
Attorney for DoD/FBA

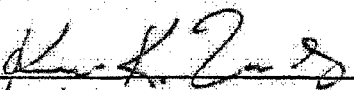
5 November 2010  
Date

QWEST

By: \_\_\_\_\_

Date \_\_\_\_\_

CENTURYLINK

  
By: Kevin K. Zarting  
Senior Counsel, CenturyLink

Nov. 5, 2010  
Date

## ATTACHMENT 1

### VOLUME AND TERM PRICE PLAN ("Plan"):

- The post-merger company will not increase current (as of the execution date of the Agreement) pricing on retail Business Lines with or without Qwest Packages (single or multi-line), Centrex, Qwest Utility Line™, and PBX trunks for three years after the execution of this Agreement.
- If, at commencement or during the volume and term price plan duration, the rate charged for any Service covered by this Agreement is higher than the price listed in the applicable Tariff, Service Catalog or Price List, then the post-merger company shall reduce the price for such Services to the lower Tariff, Service Catalog or Price List rate, and the price commitment shall apply to such price.
- This Agreement is contingent on the U.S. Government and its agencies in Arizona, Colorado, and Utah maintaining total service levels that result in billings by the post-merger company that are at least 90% of the average quarterly billings for the four quarters preceding the date of this Agreement. If, after notice from the post-merger company, the total service billings remain continuously below the 80% level for 180 days, the Plan may be terminated by the post-merger company. This Agreement is also contingent upon approval of the Agreement and of the CenturyLink/Qwest merger by the applicable state regulatory commission.
- This Plan is being offered to the U.S. Government and its agencies on an individual case basis ("ICB") pursuant to applicable state regulations.
- Customer may move or add Service if the post-merger company commercially offers such options, and Customer agrees to pay all standard applicable charges related to such changes. Services that are added or changed will be covered by this Plan.
- This Plan will be implemented in the post-merger company's local service areas in Arizona, Colorado, and Utah.
- CenturyLink and Qwest commit that all service quality requirements that are part of any commission order relating to the proposed merger, as well as any other service quality requirements ordered by any commission shall be applicable to service provided to the U.S. Government and its agencies under this Agreement.
- This Agreement may be extended with the mutual consent of the parties. After the initial three years, this Agreement may be terminated by either party with 60 days notice.

- Additional standard terms and conditions may be incorporated if the parties reach agreement.
- The Plan does not affect existing Federal Government contracts.

#### **EMPLOYEES HOLDING SECURITY CLEARANCES:**

Qwest currently provides services to the U.S. Government under several contracts that require the services of Qwest employees who hold U.S. Government security clearances. Both Qwest and CenturyLink recognize the importance of assuring that the services provided under these contracts are not disrupted by the integration of CenturyLink and Qwest after their merger is finalized. CenturyLink and Qwest therefore commit that the merger of the two companies will not result in a reduction of service quality as a result of the separation from employment of employees who hold security clearances and who are engaged in providing services to the Government that require employees with such clearances, in accordance with contract provisions. CenturyLink and Qwest affirm that no organizational or personnel changes will impair either the post-merger company's ability to perform under existing contracts or its ability to bid on new contracts that require security clearances of company's personnel.

#### **SERVICE QUALITY:**

With regard to Utah, the Applicants agree that the post-merger company will not seek waiver from the requirements of R. 746-340, sections 8 and 9, for two years following the date of the close of the merger.



ORIGINAL

RECEIVED

BEFORE THE ARIZONA CORPORATION COMMISSION

2010 NOV 10 P 4:32

AZ CORP COMMISSION  
DOCKET CONTROL



KRISTIN K. MAYES  
Chairman  
GARY PIERCE  
Commissioner  
PAUL NEWMAN  
Commissioner  
SANDRA D. KENNEDY  
Commissioner  
BOB STUMP  
Commissioner

JOINT NOTICE AND APPLICATION  
OF QWEST CORPORATION, QWEST  
COMMUNICATIONS COMPANY,  
LLC, QWEST LD CORP., EMBARQ  
COMMUNICATIONS, INC. D/B/A  
CENTURY LINK  
COMMUNICATIONS,  
EMBARQ PAYPHONE SERVICES,  
INC. D/B/A CENTURYLINK, AND  
CENTURYTEL SOLUTIONS, LLC  
FOR APPROVAL OF THE  
PROPOSED MERGER OF THEIR  
PARENT CORPORATIONS QWEST  
COMMUNICATIONS  
INTERNATIONAL INC. AND  
CENTURYTEL, INC.

DOCKET NOS. : T-01051B-10-0194  
T-03902A-10-0194  
T-02811B-10-0194  
T-20443A-10-0194  
T-04190A-10-0194  
T-03555A-10-0194

NOTICE OF SETTLEMENT  
AGREEMENT BETWEEN JOINT  
APPLICANTS AND INTEGRA  
TELECOM, INC.

The applicants named in the caption ("Joint Applicants") hereby notify the Commission that a Settlement Agreement has been entered into by and among the Joint Applicants and Integra Telecom, Inc. ("Integra") (collectively the Joint Applicants and Integra are referred to below as the "Settling Parties"). The Settlement Agreement, a copy of which is attached, sets forth all of the terms and conditions of the Settling Parties' agreement. With the commitments represented in the Settlement Agreement, as indicated therein, Integra agrees that from its perspective, the proposed merger is in the public interest and should be approved by the Arizona Corporation Commission.

Arizona Corporation Commission

DOCKETED

NOV 10 2010

DOCKETED BY

A handwritten signature in black ink, appearing to be "JSS", written over a rectangular box.

1 RESPECTFULLY SUBMITTED this 10<sup>th</sup> day of November, 2010.

2  
3 QWEST

4  
5 By: Norman G. Curtright  
6 Norman G. Curtright  
7 Associate General Counsel, Qwest  
8 20 E. Thomas Rd., 16<sup>th</sup> Floor  
9 Phoenix, Arizona 85012  
Attorney for Qwest Corporation,  
Qwest Communications Company, LLC,  
Qwest LD Corp.

10 SNELL & WILMER, L.L.P.

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12 By: Norman G. Curtright, for  
13 Jeffrey W. Crockett  
14 Bradley S. Carroll  
15 One Arizona Center  
400 East Van Buren  
Phoenix, Arizona 85004-2202

16 and

17 Kevin K. Zarling  
18 (admitted *pro hac vice*)  
19 Senior Counsel, CenturyLink  
400 W. 15<sup>th</sup> Street, Suite 315  
Austin, Texas 78701

20 Attorneys for Embarq Communications, Inc.  
21 d/b/a Century Link Communications,  
22 Embarq Payphone Services, Inc. d/b/a  
CenturyLink,  
and CenturyTel Solutions, LLC

23  
24 ORIGINAL and 13 copies of the foregoing  
25 filed this 10<sup>th</sup> day of November, 2010 with:  
26

1 Docket Control  
2 Arizona Corporation Commission  
3 1200 West Washington Street  
4 Phoenix, AZ 85007

5 **COPY** of the foregoing hand-delivered  
6 this same day to:

7 Belinda Martin, Administrative Law Judge  
8 Hearing Division  
9 ARIZONA CORPORATION  
10 COMMISSION  
11 1200 W. Washington Street  
12 Phoenix, AZ 85007

Lyn Farmer  
Chief Administrative Law Judge  
ARIZONA CORPORATION  
COMMISSION  
1200 West Washington Street  
Phoenix, AZ 85007

13 Janice Alward, Chief Counsel  
14 Legal Division  
15 ARIZONA CORPORATION  
16 COMMISSION  
17 1200 West Washington Street  
18 Phoenix, Arizona 85007

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Utilities Division  
ARIZONA CORPORATION  
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19 Maureen Scott, Staff Attorney  
20 Legal Division  
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24 Phoenix, AZ 85007

25 **COPY** of the foregoing mailed and/or emailed  
26 this same day to:

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11 1111 14<sup>TH</sup> Street, N.W., Suite 300  
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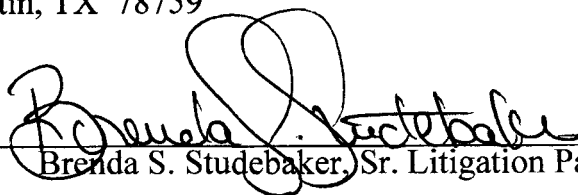
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Lyndall Nipps  
tw telecom  
9665 Granite Ridge Drive, Suite 500  
San Diego, CA 921223

19 By:



Brenda S. Studebaker, Sr. Litigation Paralegal

## **SETTLEMENT AGREEMENT**

This Settlement Agreement ("Agreement") is entered into this 6th day of November, 2010, by and among CenturyLink, Inc., a Louisiana Corporation ("CenturyLink"), and its affiliates, Qwest Communications International, Inc. ("QCI"), a Delaware Corporation, and its affiliates, including Qwest Corporation, Integra Telecom, Inc., an Oregon Corporation, and its affiliates (collectively "Integra" or "CLEC(s)") with operations in the state of Arizona, Colorado, Idaho, Minnesota, Montana, North Dakota, Oregon, Utah, and Washington, among others. To the extent that Integra becomes certified to do business or does business in Iowa, Nebraska, New Mexico, South Dakota, and Wyoming during the time periods covered by this Agreement, this Agreement will also apply. CenturyLink, QCI and Integra may be referred to collectively as the "Parties."

*Whereas*, CenturyLink and QCI have entered into an Agreement and Plan of Merger, dated April 21, 2010, which, upon completion, will result in QCI becoming a wholly owned subsidiary of CenturyLink ("Transaction").

*Whereas*, the Transaction requires the approval of the Federal Communications Commission ("FCC") and various state commissions in states where CenturyLink, QCI, or Integra operate, among other approvals.

*Whereas*, CenturyLink and QCI have filed applications for authorization to effectuate the Transaction at the FCC and in several states, including in the states of Arizona, Colorado, Iowa, Nebraska, Minnesota, Montana, Oregon, Utah, and Washington.

*Whereas*, Integra intervened in the state commission review proceedings in Arizona, Colorado, Minnesota, Montana, Oregon, Utah, and Washington, and filed or presented testimony expressing concerns related to the Transaction. Integra also made filings with the FCC raising similar concerns, objections, and proposed conditions and has presented its concerns regarding the Transaction to various Legislators.

*Whereas*, the Parties have reached a mutually agreeable settlement of Integra's concerns, objections, and proposed conditions regarding the Transaction such that Integra believes that with this Agreement, and without modification or addition to its terms, the Transaction is in the public interest from Integra's perspective and should be approved by the FCC and the state commissions.

In consideration of the mutual representations and covenants contained herein, the Parties hereby agree as follows:

**A. Definitions:**

"Closing Date" or "Merger Closing Date" refers to the closing date of the Transaction for which the Applicants have sought approval from the FCC and state commissions.<sup>1</sup>

"Merged Company" refers to the post-merger company (CenturyLink and its operating companies, collectively, after the Closing Date).

"Operational Support Systems" or "OSS" are as defined by 47 CFR 51.319(g) and as interpreted in the rules and orders of the FCC.

"OSS Interfaces" are defined as existing or new gateways (including application-to-application interfaces and Graphical User Interfaces), connectivity and system functions that support or affect the pre-order, order, provisioning, maintenance and repair, and billing capabilities for local services (local exchange services) provided by CLECs to their end users.

"Qwest Corporation" and "Qwest" refer to Qwest Corporation and its successors and assigns.

**B. Terms:**

1. The Merged Company will not recover, or seek to recover through wholesale service rates or other fees paid by CLECs: a) one-time transition, branding, or any other transaction-related costs; b) any acquisition premium paid by CenturyLink for QCI; and c) any increases in overall management costs that result from the transaction, including those incurred by the operating companies. For purposes of this condition, "transaction-related costs" shall be construed to include all Merged Company costs related to or resulting from the transaction and any related transition, conversion, or migration costs and, for example, shall not be limited in time to costs incurred only through the Closing Date.
2. In the legacy Qwest ILEC service territory, the Merged Company shall comply with all wholesale performance requirements and associated remedy or penalty regimes for all wholesale services, including those set forth in regulations, tariffs, interconnection agreements, and Commercial agreements applicable to legacy Qwest as of the Merger Closing Date. In the legacy Qwest service territory, the Merged Company shall continue to provide to CLECs at least the reports of wholesale performance metrics that legacy Qwest made available, or was required to make available, to CLECs as of the Merger Closing Date.

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<sup>1</sup> See Applications Filed by Qwest Communications International Inc. and CenturyTel, Inc., d/b/a/ CenturyLink for Consent to Transfer of Control, Pleading Cycle Established, Public Notice, DA 10-993, WC Dkt. No. 10-110 (rel. May 28, 2010) ("Public Notice") and related applications filed in state proceedings.

or as subsequently modified or eliminated as permitted under this Agreement or pursuant to any changes in law. The Merged Company shall also provide these reports to state commission staff or the FCC, when requested. The state commission and/or the FCC may determine that additional remedies are required, to the extent a state commission or FCC finds it is consistent with its jurisdiction. The Merged Company does not waive its right to oppose such a request.

a. The Parties will not seek to reduce or modify the Qwest Performance Indicator Definition (PID) or Qwest Performance Assurance Plan (QPAP)<sup>2</sup> that is offered, or provided via contract or Commission approved plan, as of the Merger Closing Date for at least eighteen months after the Closing Date.<sup>3</sup> After the eighteen month period, the Parties may seek modifications under the terms and conditions outlined in the QPAP. The Merged Company will not seek to eliminate or withdraw the QPAP for at least three years after the Closing Date. The QPAP will be available to all requesting CLECs unless the Merged Company obtains approval from the applicable state commission to eliminate or withdraw it.

i. For at least three years after the Closing Date, and consistent with the FCC's required conditions of the Embarq-CenturyTel merger, in the legacy Qwest ILEC service territory, the Merged Company shall meet or exceed the average wholesale performance provided by Qwest to CLEC, measured as follows:

- (a.) For the first three months after Closing Date, Qwest's performance will be compared to Qwest's performance for the twelve months prior to Closing Date.
- (b.) Thereafter, each successive month of Qwest's performance will be added to the three month period in (a.) in determining Qwest's performance until twelve months after Closing Date.
- (c.) Beginning one year after Closing Date, Qwest's performance will be measured by a rolling twelve month average performance.

b. If the Merged Company fails to provide wholesale performance levels as measured by the methodology described in this condition, the Merged Company must

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<sup>2</sup> In Colorado, the QPAP is known as the CPAP. In Minnesota, the QPAP is known as the MPAP. These state-specific terms will be used in agreements filed in Colorado and Minnesota.

<sup>3</sup> The limitations of paragraph 2.a do not apply to implementation of any decision arising from Colorado Docket No. 02M-259T. In addition, the parties agree not to initiate any further action in North Dakota Docket No. PU-08-04, until at least eighteen months after the Closing Date, however the Parties may implement any decision arising from that docket. Qwest will implement Idaho Order No. 32106 in Case No. QWE-T-08-04. The Parties agree, however, that they will jointly request that the Idaho Commission take no further action in that docket until at least eighteen months after the Closing Date.



conduct a root cause analysis for the discrepancies and develop proposals to remedy each deficiency within thirty days and provide this to CLEC for review and comment.

i. CLEC may invoke the root cause procedure for deterioration in wholesale performance for any PID, product, or disaggregation included within a PID measure if CLEC determines that the performance it received for that PID, product, or disaggregation is materially different and provides the basis for CLEC's determination.

ii. If performance deficiencies are not resolved, CLEC may request a resolution or wholesale service quality proceeding before the state commission. The Merged Company does not waive its right to oppose such a request.

3. Notwithstanding any provision allowing one or both parties to Qwest interconnection agreements, Commercial agreements, Wholesale agreements, interstate tariffs, and intrastate tariffs, and other wholesale agreements between Qwest Corporation or its successors and assigns and CLEC ("Extended Agreements") to terminate the Extended Agreement upon or after expiration of the term of the agreement, the Merged Company shall not terminate or grandparent, change the terms or conditions, or increase the rates of any Extended Agreements during the unexpired term or for at least the Applicable Time Period identified below, whichever occurs later (the "Extended Time Period"), unless required by a change of law, or CLEC requests or agrees in writing to a change and any applicable procedure to effectuate that change is followed. In the event that the Extended Agreement expressly allows termination of the agreement in other circumstances, such as default due to non-payment, this Condition does not preclude termination of an Extended Agreement in those circumstances provided that the Merged Company follows both (1) the Extended Agreement's express provisions, and (2) any applicable procedures pertaining to such termination. Upon approval of the Transaction with this Agreement in the public record, the Parties will consider these terms to be part of the order of approval and thus not trigger or require the filing of an ICA amendment, unless directed otherwise by the commissions or FCC. To the extent an amendment is requested, the Parties agree to execute and file an amendment to the ICA within 30 days of the Closing Date, the terms of which will mirror the language in this Agreement, unless mutually agreed otherwise.

- a. Interconnection Agreements. The Applicable Time Period for Qwest's interconnection agreements (ICAs) is at least thirty-six months after the Closing Date.<sup>4</sup> The Extended Time Period applies whether or not the initial or current term has expired or is in evergreen status.

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<sup>4</sup> Notwithstanding anything that may be to the contrary in paragraphs 3.3a, and 4, in Colorado where a cost docket is nearing completion but may not be final as of the Closing Date, the rates established in Colorado cost docket

i. The Merged Company shall allow CLEC to use its pre-existing interconnection agreement as the basis for negotiating an initial successor replacement interconnection agreement to the extended ICA. Where the parties agree it is reasonable to do so, the parties may incorporate the amendments to the existing agreement into the body of the agreement used as the basis for such negotiations of the initial successor replacement interconnection agreement.

ii. CLEC may opt-in to an interconnection agreement in its initial term or the extended term.

iii. If Qwest and CLEC are in negotiations for a replacement interconnection agreement before the Closing Date, the Merged Company will allow CLEC to continue to use the negotiations draft upon which negotiations prior to the Closing Date have been conducted as the basis for negotiating a replacement interconnection agreement. In the latter situation (ongoing negotiations), after the Closing Date, the Merged Company will not substitute a negotiations template interconnection agreement proposal of any legacy CenturyLink operating company for the negotiations proposals made before the Closing Date by legacy Qwest.

b. Commercial Agreements. The Applicable Time Period for Commercial agreements is at least eighteen months after the Closing Date for Qwest's Commercial agreements (i.e., offerings made available after a UNE(s) becomes unavailable via ICA): Broadband for Resale, Commercial Broadband Services (QCBS), Commercial Dark Fiber, High Speed Commercial Internet Service (HSIS), Local Services Platform (QLSP), Internetwork Calling Name (ICNAM), and Commercial Line Sharing, as well as any other Commercial agreement to which Qwest and CLEC were parties as of the Closing Date. Notwithstanding any provision to the contrary in this Agreement:

i. After the eighteen month period, Qwest reserves the right to modify rates.

ii. If a Commercial agreement later becomes unavailable on a going forward basis, the agreement will remain available to CLEC on a grandparented basis to serve CLEC's embedded base of customers already being served via services purchased under that Commercial agreement, subject to Qwest's right to modify

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number 07A-211T will replace the corresponding rates in Qwest-CLEC Colorado ICAs as of the Closing Date for purposes of this paragraph 3; nor does the paragraph prevent implementation of the rates contemplated in paragraph 14.

rates, for at least eighteen months after Qwest has notified CLEC that the agreement is no longer available.

- c. **Wholesale Agreements.** The Applicable Time Period for Wholesale agreements is at least eighteen months after the Closing Date for Qwest's Wholesale agreements (i.e., offerings made available after a tariffed offering becomes unavailable via tariff): Wholesale Data Services Agreement (ATM, Frame Relay, GeoMax, HDTV-Net, Metro Optical Ethernet, Self-Healing Network, Synchronous Service Transport), as well as any other Wholesale agreement to which Qwest and CLEC were parties as of the Closing Date. Notwithstanding any provisions to the contrary in this Agreement:

i. After the eighteen month period, Qwest reserves the right to modify rates.

ii. If a Wholesale agreement later becomes unavailable on a going forward basis, the agreement will remain available to CLEC on a grandparented basis to serve CLEC's embedded base of customers already being served via services purchased under that Wholesale agreement for at least eighteen months after Qwest has notified CLEC that the agreement is no longer available, subject to Qwest's right to modify rates.

- d. **Tariffs.** The Applicable Time Period is at least twelve months after the Closing Date for Qwest wholesale tariff offerings that CLEC ordered from Qwest via tariff as of the Closing Date. Notwithstanding any provision to the contrary in this Agreement, Qwest may engage in Competitive Response pricing as set forth in its tariffs.

i. Regarding term and volume discount plans, such plans offered by Qwest as of the Closing Date will be extended by twelve months beyond the expiration of the then existing term, unless CLEC indicates it opts out of this one-year extension.

ii. The Merged Company will honor any existing contracts for services on an individualized term pricing plan arrangement for the duration of the contracted term.

4. **Rates Generally.** The Merged Company, in paragraph 3, agrees not to increase the rates in Qwest interconnection agreements during the Extended Time Period<sup>5</sup>. If, during the

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<sup>5</sup> Notwithstanding anything that may be to the contrary in paragraphs 3, 3a, or 4, in Colorado where a cost docket is nearing completion but may not be final as of the Closing Date, the rates established in Colorado cost docket number 07A-211T will replace the corresponding rates in Qwest-CLEC Colorado ICAs as of the Closing Date for purposes of this paragraph; nor does the paragraph prevent implementation of the rates contemplated in paragraph 14.

Extended Time Period, the Merged Company offers a Section 251 product or service that is not offered under an interconnection agreement (a "new" product or service), the Merged Company may establish a rate using normal procedures. A product, service, or functionality is not "new" for purposes of this paragraph if Qwest was already providing that product, service, or functionality at existing rates as of the Closing Date in the legacy Qwest ILEC serving territory.

- a. Regarding rates changed via a state commission cost docket, the Merged Company may initiate a cost docket (or seek rate increases in a cost docket initiated by another party) before the expiration of the thirty-six month period for extension of ICA terms only if (i) the rate elements, charges or functionalities are not already provided under rates as of the Closing Date as described in paragraph 4; or (ii) the cost docket is not initiated until at least eighteen months after the Closing Date and any rates approved in the cost docket will not become effective until after expiration of the thirty-six month period for extension of ICA terms.
  - b. After the Closing Date, in the legacy Qwest ILEC serving territory, the Merged Company shall not assess any fees, charges, surcharges or other assessments upon CLECs for activities that arise during the subscriber acquisition and migration process other than any fees, charges, surcharges or other assessments that were approved by the applicable commission and charged by Qwest in the legacy Qwest ILEC service territory before the Closing Date, unless Qwest first receives Commission approval. This condition prohibits the Merged Company from charging such fees, charges, surcharges or other assessments, including:
    - i. Service order charges assessed upon CLECs submitting local service requests ("LSRs") for number porting;
    - ii. Access or "use" fees or charges assessed upon CLECs that connect a competitor's own self-provisioned loop, or last mile facility, to the customer side of the Merged Company's network interface device ("NID") enclosure or box; and
    - iii. "Storage" or other related fees, rents or service order charges assessed upon a CLECs' subscriber directory listings information submitted to the Merged Company for publication in a directory listing or inclusion in a directory assistance database.
5. In the legacy Qwest ILEC service territory, to the extent that an interconnection agreement is silent as to an interval for the provision of a product, service or functionality or refers to

Qwest's website or Service Interval Guide (SIG), the applicable interval, after the Closing Date, shall be no longer than the interval in Qwest's SIG as of the Closing Date. Either Party may request an amendment to the interconnection agreement to lengthen an interval after the thirty-six month period for extension of ICA terms.

6. CenturyLink and all of its incumbent local exchange carrier ("ILEC") affiliates will comply with 47 U.S.C. Sections 251 and 252. In the legacy Qwest ILEC service territory, the Merged Company will not seek to avoid any of its obligations on the grounds that Qwest Corporation is exempt from any of the obligations pursuant to Section 251(f)(1) or Section 251(f)(2) of the Communications Act.
7. In the legacy Qwest ILEC service territory, after the Closing Date, Qwest Corporation shall be classified as a Bell Operating Company ("BOC"), pursuant to Section 3(4)(A)-(B) of the Communications Act and shall be subject to all requirements applicable to BOCs, including Sections 271 and 272.
8. Qwest will not seek to reclassify as "non-impaired" any Qwest wire centers for purposes of Section 251 of the Communications Act, nor will the Merged Company file any new petition under Section 10 of the Communications Act seeking forbearance from any Section 251 or 271 obligation or dominant carrier regulation in any Qwest wire center before June 1, 2012.
9. The Merged Company shall provide to wholesale carriers, and maintain and make available to wholesale carriers on a going-forward basis, up-to-date escalation information, contact lists, and account manager information and will provide this information, when possible, thirty days prior to the Closing Date. If not possible, the Merged Company will provide the information within five business days, absent exigent circumstances. For changes to support center location, the Merged Company will provide at least thirty days advance written notice to wholesale carriers. For other changes, the Merged Company will provide reasonable notice, as circumstances permit, of the changes and will keep pertinent information timely updated. The information and notice provided shall be consistent with the terms of applicable interconnection agreements.
10. The Merged Company will make available to each wholesale carrier in the legacy Qwest ILEC service territory the types and level of data, information, and assistance that Qwest made available as of the Closing Date concerning Qwest's wholesale Operational Support Systems functions and wholesale business practices and procedures, including information provided via the wholesale web site (which Qwest sometimes refers to as its Product Catalog or "PCAT"), notices, industry letters, the change management process, and databases/tools (loop qualification tools, loop make-up tool, raw loop data tool, ICONN database, etc.).

11. The Merged Company shall ensure that Wholesale and CLEC operations are sufficiently staffed and supported, relative to wholesale order volumes, by personnel, including IT personnel, adequately trained on the Qwest and CenturyLink systems and processes. With respect to the Wholesale and CLEC operations, such personnel shall be dedicated exclusively to wholesale operations so as to provide a level of service that is not materially less than that which was provided by Qwest prior to the Merger Closing Date and to ensure that CLEC protected information is not used by the Merged Company's retail operations or marketing purposes. The Merged Company will employ people who are dedicated to the task of meeting the needs of CLECs and other wholesale customers.
12. In legacy Qwest ILEC service territory, after the Closing Date, the Merged Company will use and offer to wholesale customers the legacy Qwest Operational Support Systems (OSS) for at least two years, or until July 1, 2013, whichever is later, and thereafter provide a level of wholesale service quality that is not materially less than that provided by Qwest prior to the Closing date, including support, data, functionality, performance, electronic flow through, and electronic bonding. After the period noted above, the Merged Company will not replace or integrate Qwest systems without first establishing a detailed transition plan and complying with the following procedures:
  - a. Detailed Plan. The Merged Company will provide notice to the Wireline Competition Bureau of the FCC, the state commission of any affected state and parties to this agreement at least 270 days before replacing or integrating Qwest OSS system(s). Upon request, the Merged Company will describe the system to be replaced or integrated, the surviving system, and steps to be taken to ensure data integrity is maintained. The Merged Company's plan will also identify planned contingency actions in the event that the Merged Company encounters any significant problems with the planned transition. The plan submitted by the Merged Company will be prepared by information technology professionals with substantial experience and knowledge regarding legacy CenturyLink and legacy Qwest systems processes and requirements. CLEC will have the opportunity to comment on the Merged Company's plan in a forum in which it is filed, if the regulatory body allows comments, as well as in the Qwest Change Management Process.
  - b. CMP. The Merged Company will follow the procedures in the Qwest Change Management Process ("CMP") Document.<sup>6</sup>

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<sup>6</sup> The Qwest CMP Document is available at <http://www.qwest.com/wholesale/cmp/>

c. Replacement or Retirement of a Qwest OSS Interface.

i. The replacement or retirement of a Qwest OSS Interface may not occur without sufficient acceptance of the replacement interface by CLECs to help assure that the replacement interface provides the level of wholesale service quality provided by Qwest prior to the Closing Date (as described in paragraph 12 above). Each party participating in testing will commit adequate resources to complete the acceptance testing within the applicable time period. The Parties will work together to develop acceptance criteria. Testing will continue until the acceptance criteria are met. Sufficient acceptance of a replacement for a Qwest OSS Interface will be determined by a majority vote, no vote to be unreasonably withheld, of the CMP participants (Qwest and CLECs) in testing, subject to any party invoking the CMP's Dispute Resolution process. The requirements of this paragraph will remain in place only until completion of merger-related OSS integration and migration activity. If a dispute arises as to whether such merger-related OSS integration and migration activity is complete, the state commission will determine the completion date.

ii. The Merged Company will allow coordinated testing with CLECs, including a stable testing environment that mirrors production, jointly established test cases, and, when applicable, controlled production testing, unless otherwise agreed to by the Parties. Testing described in this paragraph associated with merger-related system replacement or integration will be allowed for the time periods in the CMP Document, or for 120 days, whichever is longer, unless otherwise mutually agreed to by the Parties.

iii. The Merged Company will provide the wholesale carriers training and education on any wholesale OSS implemented by the Merged Company without charge to the wholesale carrier.

d. Billing Systems. The Merged Company will not begin integration of Billing systems before the end of the minimum two year or July 1, 2013 period, whichever is longer, noted above, or without following the above procedures, unless the integration will not impact data, connectivity and system functions that support or affect CLECs and their customers. .

i. Any changes by the Merged Company to the legacy Qwest non-retail OSS will meet all applicable ICA provisions related to billing and, to the extent not included in an ICA, will be Ordering and Billing Forum (OBF) compliant.

13. After the Closing Date, the Merged Company will engineer and maintain its network in compliance with federal and state law, as well as the terms of applicable interconnection agreements.

a. The Merged Company shall not engineer the transmission capabilities of its network in a manner, or engage in any policy, practice, or procedure, that disrupts or degrades access to the local loop, as provided by 47 C.F.R. § 51.319(a)(8).

b. The Merged Company will retire copper in compliance with federal and state law, as well as the terms of applicable interconnection agreements and as required by a change of law.

14. No later than 30 days after the Closing Date, the Parties agree to amend its existing Qwest-CLEC interconnection agreements by executing the line conditioning amendment contained in Attachment A to this Agreement and by filing the amendment with the applicable state commissions. The terms of the amendment will be included in the ICAs between the Parties for the Extended Time Period contemplated in paragraph 3, unless required by a change in law. Notwithstanding anything to the contrary in this Agreement, the Parties agree to implement the rates, terms and conditions of the amendment upon execution and applicable commission approval of the amendment. The Parties agree to execute and file the amendment within 10 days of execution of this Agreement for Qwest-CLEC Minnesota ICAs and further agree to implement the terms of the amendment no later than January 15, 2011 in Minnesota. Upon execution of this Agreement, CLEC agrees that this amendment satisfies its concerns on line conditioning expressed in Minnesota Docket No. P-421/CI-09-1066 and that it will seek no further relief on this issue in that docket. Nothing in this Agreement precludes Qwest and CLEC from filing the Amendment for commission approval in any other state before the Closing Date, if Qwest and CLEC mutually agree to do so.

15. After fully executed, filed with and, where necessary, approved by a Commission, this Agreement will be made available to any requesting carrier. Additionally, if an order approving this transaction includes any condition not contained in this Agreement or includes provisions inconsistent with those contained in this Agreement, the Merged Company will make that condition or provision available to other carriers in that state upon request, to the extent applicable.

**C. Process for Treatment of Agreement:**

The Parties agree that this Agreement resolves all contested issues, objections, proposed conditions and other advocacy related specifically to this Transaction as between them. Integra agrees that this Agreement, without modification or addition, is in the public interest.



Consequently, from its perspective, Integra believes that the Transaction is in the public interest and should be approved by the FCC and state commissions. The Parties acknowledge that this Agreement is not confidential and further agree to the issuance of a joint press release announcing that an Agreement has been reached and that, in consideration of this Agreement, approval of the Transaction is in the public interest from Integra's perspective. The Parties further agree to immediately notify the FCC and the state commissions upon execution that this Agreement has been reached and will provide a courtesy copy of this Agreement. This Agreement shall be filed with the state commissions in the states of Arizona, Colorado, Minnesota, Montana, Oregon, Utah and Washington<sup>7</sup> and any other states where required, within five business days of execution. Integra further commits that, upon request of CenturyLink and QCI, that within 10 days of execution, a representative of Integra with knowledge of this Agreement will accompany CenturyLink and QCI to meetings at the FCC or with members of Congress or their staff to explain that this Agreement, without modification or addition, is in the public interest from Integra's perspective and the Transaction should be approved.

Where testimony filed by one or both of the Integra witnesses has not yet been admitted into evidence and the procedural schedule and rules of a regulatory body permit, Integra will seek leave to withdraw or not submit into the evidentiary record the prefiled testimony of the Integra witnesses in that state, subject to Integra's right to file or re-file testimony as provided in this Agreement. Integra agrees it will represent that this Agreement adequately addresses its concerns and proposed conditions contained in its pre-filed testimony and will represent that, from its perspective, with this Agreement, the Transaction is in the public interest and should be approved. Furthermore, if required by a regulatory body or requested by CenturyLink, Integra will provide a witness to support this Agreement and will testify that with this Agreement, without modification, approval of the Transaction as in the public interest from its perspective. To the extent required by a regulatory body, Integra also agrees to provide such other information in support of this Agreement and approval of the Transaction. No Party to this Agreement will engage in any advocacy (directly or indirectly) contrary to this Agreement. Integra will not advocate for any other party's proposed wholesale conditions or opposition to the Transaction before any regulatory body, or otherwise, except as provided for in this Agreement regarding modification, rejection, or enforcement of this Agreement. Integra will no longer retain QSI Consultants, or any other consultant, as consultants or witnesses in a proceeding reviewing the Transaction after the date this Agreement is executed and filed in that proceeding, unless this Agreement is modified over Integra's objection or rejected. To the extent the consultants, witnesses, and outside counsel represent other intervenors before the FCC and the state commissions, Integra will inform them, as well as the FCC and those state commissions, that they are no longer representing Integra, nor advocating for Integra's positions, unless otherwise retained, at Integra's option, consistent with Integra's obligation under this Agreement.

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<sup>7</sup> To the extent necessary to comply with a given state filing convention, the Parties agree to work cooperatively to present this Agreement in the appropriate format, without change in content.

In the event any portion of this Agreement is rejected or altered by a state regulatory body, Integra may submit or re-submit its pre-filed testimony in that jurisdiction. In the event this Agreement is modified or rejected, each Party reserves its right, upon written notice to the Commission and the parties within five (5) business days of the Commission's Order modifying or rejecting this Agreement, to withdraw from this Agreement as to that particular state, with the effect of respectfully requesting the Commission decide all contested issues based on the record, including any testimony that had been withdrawn or not filed due to the execution of this Agreement.

**D. Entire Agreement:**

This Agreement constitutes the Parties' entire agreement on all matters set forth herein, and it supersedes any and all prior oral and written understandings or agreements on such matters that previously existed or occurred in any proceeding related to this Transaction, and no such prior understanding or agreement or related representations shall be relied upon by the Parties.

**E. Agreement As Precedent:**

The Parties have entered into this Agreement to avoid further expense, inconvenience, uncertainty and delay. Nothing in this Agreement (or any testimony, presentation or briefing in any proceeding to approve the Transaction) shall be asserted or deemed to mean that a Party agreed with or adopted another Party's legal or factual assertions related to this Transaction. The limitations in this paragraph shall not apply to any proceeding to enforce the terms of this Agreement or any commission order adopting this Agreement in full, as appropriate.

Furthermore, because this Agreement represents a compromise position of the Parties no Party may use this Agreement as precedent on the appropriateness of the positions of that other Party or of other intervenors in any other proceeding and no conduct, statements or documents disclosed in the negotiation of this Agreement (not including non-privileged, publicly available documents) shall be admissible as evidence in any other proceeding.

**F. Effective Date:**

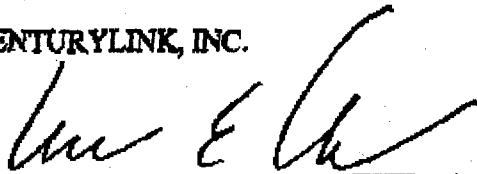
This Agreement is effective upon execution, however, the Settlement Terms contained in Section B shall not become effective unless and until the Transaction closes. If the Transaction does not close, this Agreement and Settlement Terms are null and void.

**G. Manner of Execution:**

This Agreement is considered executed when all Parties sign this Agreement. A designated and authorized representative may sign this Agreement on a Party's behalf. The Parties may execute this Agreement in counterparts. If this Agreement is executed in counterparts, all counterparts shall constitute one agreement. A faxed or scanned and emailed signature page containing the signature of a Party is acceptable as an original signature page signed by that Party. Each Party shall indicate the date of its signature on this Agreement.

Dated this 6th day of November 2011.

CENTURYLINK, INC.



By: William E. Cheek, President Wholesale Operations

Dated:

QWEST COMMUNICATIONS INTERNATIONAL, INC.

By: R. Steven Davis,

Senior Vice President—Public Policy & Government Relations

Dated:

INTEGRA TELECOM, INC.

By: James H. Huesgen, President

Dated:

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Dated this 6th day of November 2011.

CENTURYLINK, INC.

By: William E. Check, President Wholesale Operations

Dated:

QWEST COMMUNICATIONS INTERNATIONAL, INC.



By: R. Steven Davis,

Senior Vice President—Public Policy & Government Relations

Dated:

INTEGRA TELECOM, INC.

By: James H. Huesgen, President

Dated:

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Dated this 6th day of November 2011.

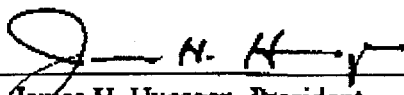
CENTURYLINK, INC.

\_\_\_\_\_  
By: William E. Check, President Wholesale Operations  
Dated:

QWEST COMMUNICATIONS INTERNATIONAL, INC.

\_\_\_\_\_  
By: R. Steven Davis,  
Senior Vice President—Public Policy & Government Relations  
Dated:

INTEGRA TELECOM, INC.

  
\_\_\_\_\_  
By: James H. Huesgen, President  
Dated:

**Attachment A to Settlement Agreement:**

**Unbundled Loops Used to Provide xDSL Services Amendment  
to the Interconnection Agreement between  
Qwest Corporation and  
[CLEC] for the State of [State]**

This is an Amendment ("Amendment") to the Interconnection Agreement between Qwest Corporation ("Qwest"), a Colorado corporation, and [insert CLEC name] ("CLEC"). Qwest and CLEC shall be referred to jointly as the "Parties."

**RECITALS**

WHEREAS, the Parties entered into an Interconnection Agreement ("Agreement") in the state of [insert state], which was approved by the Commission;

WHEREAS, the Parties agree to amend the Agreement further under the terms and conditions contained herein.

**AGREEMENT**

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**Amendment Terms**

The Agreement is hereby amended by adding terms and conditions relating to xDSL Capable Loops, as set forth in Attachments 1-3 and Exhibit A to this Amendment, attached hereto and incorporated herein by this reference. The Parties agree the terms in this document are for the limited purposes of this Amendment. CLEC and Qwest reserve their rights to assert different language and/or term(s) in other contexts.

Qwest and CLEC agree that, in the new (replacement or successor) interconnection agreement between Qwest and CLEC, the language in Attachments 1-3 and Exhibit A will be added as closed (i.e., agreed upon) language to the interconnection agreement that is submitted in a compliance filing for Commission approval in [insert State]. Integra agrees to add the closed language reflected in Attachments 1-3 and Exhibit A to the Qwest-CLEC negotiations multi-state interconnection agreement negotiations draft.

Qwest will restore Asymmetric Digital Subscriber Line ("ADSL"), including the NC code of LXR-, which Qwest previously grandparented. Qwest will reverse changes made via its Change Request ("CR") (CR #PC121106-1). Qwest will not re-notify or implement the changes initially announced in its March 13, 2009 notice (PROS.03.13.09.F.06150.LoopQualCLECJobAid\_V25) that Qwest did not implement (but indicated in its April 3, 2009 Response it will re-notify). Qwest will not take actions, or make statements in notices to CLECs, that are inconsistent with Qwest's obligation, under 47 C.F.R. § 51.319(a)(8), to not engineer the transmission capabilities of its network in a manner, or engage in any policy, practice, or procedure, that disrupts or degrades access to the local loop.

Intrabuilding cable is not addressed in this Amendment. CLEC and Qwest reserve their rights with respect to intrabuilding cable.

**Effective Date and Implementation Date**

This Amendment shall be deemed effective upon approval by the Commission; however, the Parties agree to begin implementation of the provisions of this Amendment upon execution.

**Further Amendments**

Except as modified herein, the provisions of the Agreement shall remain in full force and effect. Except as provided in the Agreement, this Amendment may not be further amended or altered, and no waiver of any provision thereof shall be effective, except by written instrument executed by an authorized representative of both Parties.

**Entire Agreement**

Other than the publicly filed Agreement and its Amendments, Qwest and CLEC have no agreement or understanding, written or oral, relating to the terms and conditions of Attachments 1-3 and Exhibit A in the State of ~~Insert State~~.

The Parties intending to be legally bound have executed this Amendment as of the dates set forth below, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

**CLEC**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name Printed/Typed

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**Qwest Corporation**

\_\_\_\_\_  
Signature

L. T. Christensen  
Name Printed/Typed

Director - Wholesale Contracts  
Title

\_\_\_\_\_  
Date

## **ATTACHMENT 1**

**NOTE:** The numbering in this Attachment 1 (which may not be consecutive) is used as a convenience to the Parties and may not be related to the numbering of the remainder of the Agreement.

### **2.0 Interpretation and Construction**

**2.3** Unless otherwise specifically determined by the Commission, in cases of conflict between the Agreement and Qwest's Tariffs, PCAT, methods and procedures, technical publications, policies, product notifications or other Qwest documentation relating to Qwest's or CLEC's rights or obligations under this Agreement, then the rates, terms and conditions of this Agreement shall prevail. To the extent another document abridges or expands the rights or obligations of either Party under this Agreement, the rates, terms and conditions of this Agreement shall prevail.

### **4.0 Definitions**

Defined terms used but not defined in this Amendment are as defined in the Agreement. To the extent that a term is defined in both the Agreement and Section 4.0 of this Amendment, the definition in the Agreement is deemed deleted, and that definition is replaced with the definition in this Section 4.0 of this Amendment, unless the definition below indicates otherwise.

For purposes of the Agreement and this Amendment, the following terms are defined as follows:

"ADSL Compatible Loop" means the unbundled Loop complies with technical parameters of the specified Network Channel/Network Channel Interface codes as specified in the relevant technical publications and industry standards for Asymmetric Digital Subscriber Line ("ADSL"), which is further described in the definition of Digital Subscriber Loop. Qwest makes no assumptions as to the capabilities of CLEC's Central Office equipment or the Customer Premises Equipment.

"Best Available Pair" means, for facilities assignment purposes, the Loop that has the least Estimated Measured Loss ("EML") and that is assigned taking into account the least amount of Conditioning, as described in Section 9.2.2.3.5.1.

"Bridged Tap" means the unused sections of a twisted pair subtending the Loop between the end user customer and the Serving Wire Center or extending beyond the end user customer. Regarding stub cable, see Section 9.2.2.3.5.2.5.1.1.1.

"Condition" or "Conditioning" has the meaning set forth in 47 C.F.R. §51.319 and as interpreted in the rules and orders of the Federal Communications Commission ("FCC"). Conditioning includes when Qwest dispatches personnel and removes at least load coils, low pass filters, range extenders, any single Bridged Tap(s) greater than 2000 feet, total Bridged Tap(s) greater than 2500 feet, any Near-End Bridged Tap(s), and any Far-End Bridged Tap(s) from a



copper unbundled Loop or Subloop. Different rates and terms apply to Remove All Conditioning, as that term is defined in this Amendment.

"Digital Subscriber Loop," "DSL," "xDSL," or "xDSL Service" refers to a set of service-enhancing copper technologies that are designed to provide digital services over copper Loops or Subloops either in addition to or instead of analog voice service including, but not limited to, the following types of xDSL Service, and successor or successive (e.g., HDSL, HDSL2, HDSL4) technologies:

"ADSL" or "Asymmetric Digital Subscriber Line" is a Passband digital Loop transmission technology that typically permits the transmission of up to 8 Mbps downstream (from the Central Office to the End User Customer) and up to 1 Mbps digital signal upstream (from the End User Customer to the Central Office) over one (1) copper pair.

"ADSL2" and ADSL2+" refer to technologies that extend the capability of ADSL in data rates up to 24 Mbit/s downstream and 3.5 Mbit/s upstream. ADSL2+ may achieve rates of 24 Mbps on telephone lines as long as 5,000 feet. ADSL2+ solutions will interoperate with ADSL and ADSL2, as well as with ADSL2+. ADSL2 is based on ITU standard G.992.3, and ADSL2+ is based on ITU standard G.992.5.

"HDSL" or "High-Data Rate Digital Subscriber Line" is a synchronous baseband DSL technology operating over one or more copper pairs. HDSL can offer 784 Kbps circuits over a single copper pair, T1 service over two (2) copper pairs, or future E1 service over three (3) copper pairs.

"HDSL2" or "High-Data Rate Digital Subscriber Line 2" is a synchronous baseband DSL technology operating over a single pair capable of transporting a bit rate of 1.544 Mbps.

HDSL4" or "High-Data Rate Digital Subscriber Line 4" is a synchronous baseband DSL technology operating over two copper pairs and is capable of transporting an aggregate bit rate of 1.544. This transport offers extended reach in comparison to HDSL2.

"ISDL" or "ISDN Digital Subscriber Line" or "Integrated Services Digital Network Digital Subscriber Line" is a symmetrical, baseband DSL technology that permits the bi-directional transmission of up to 128 Kbps using ISDN CPE but not circuit switching.

"RADSL" or "Rate Adaptive Digital Subscriber Line" is a form of ADSL that can automatically assess the condition of the Loop and optimize the line rate for a given line quality.

"SDSL" or "Symmetric Digital Subscriber Line" is a baseband DSL transmission technology that permits the bi-directional transmission from up to 160 kbps to 2.048 Mbps on a single pair.

"SHDSL" or "Single-Pair High Speed DSL" provides for sending and receiving high-speed symmetrical data streams over a single pair of copper wires. The SHDSL payload may be 'clear channel' (unstructured), T1 or E1 (full rate or fractional), multiple ISDN Basic Rate Access (BRA), Asynchronous Transfer Mode (ATM) cells, or Ethernet packets.

"G.SHDSL" or "Symmetric High Bit Rate DSL" features symmetrical data rates from 192 kbit/s to 2,304 kbit/s of payload in 64 kbit/s increments per pair. "E.SHDSL" or "Extended Single-Pair High Speed DSL" offers symmetrical data rates of up to 5,696 kbit/s in 64k increments per a pair. SHDSL is based on ITU standard G.991.2 with additional coverage of E.SHDSL in 802.3ah.

"VDSL" or "Very High Speed Digital Subscriber Line" is a baseband DSL transmission technology that permits the transmission of up to 52 Mbps downstream (from the Central Office to the End User Customer) and up to 2.3 Mbps digital signal upstream (from the End User Customer to the Central Office). VDSL can also be 26 Mbps symmetrical, or other combination.

"Embedded Base xDSL Capable Loop" refers to an xDSL Capable Loop (including ADSL Compatible Loop and Non-Loaded Loop) installed for CLEC before the Final Implementation Date of this Amendment.

"Estimated Measured Loss" or "EML" is an estimate based on a mathematical formula or algorithm and individual Loop make up. EML estimates how a requested Loop is likely to perform at the applicable specifications for a specified xDSL Service. EML is used to calculate insertion loss for various xDSL technologies based on Loop make up information in Qwest records. EML is described further in Section 9.2.2.3.5.1.

"Far-End" and/or "Near-End" Bridged Tap means Bridged Tap within 1,000 feet of the end user customer location or within 1,000 feet of the main distribution frame in the Central Office.

"LXR- xDSL Capable Loop" means an xDSL Capable Loop that is associated with the NC Code of "LXR-," including the codes identified with a Qwest LXR- NC code in Attachment 2 to this Amendment. LXR- xDSL Capable Loops include Loops with any of the NCI codes used in association with an LXR- NC code to identify the type of xDSL Service.

"Near-End" Bridged Tap – See Far-End and/or Near-End Bridged Tap

"Network Channel" or "NC" codes identify the technical details of channels provided by a Carrier, from the Point of Termination (POT) at another Carrier's Point of Presence (POP) to the central office.

"Network Channel Interface" or "NCI" codes identify interface elements such as physical conductors, protocol, impedance, protocol options, and transmission level points that reflect physical and electrical characteristics located at a POT at the switch or customer location. The NCI code communicates to Qwest the character of the signals CLEC is connecting to the network at each end-point of the metallic circuit. The NCI code tells Qwest of CLEC's specific technical requirements at a network interface. The NCI code indicates the type of xDSL Service to be deployed on the requested Loop or Subloop.

**"Non-Embedded Base xDSL Capable Loop"** refers to an xDSL Capable Loop (including ADSL Compatible Loop and Non-Loaded Loop) installed for CLEC on or after the Final Implementation Date of this Amendment.

**"Performance Parameter Tests"** means the threshold tests that Qwest will perform for Loops and Subloops used to provide xDSL Services, as set forth in Sections 9.2.2.3.5.3.1 and 9.2.2.3.5.4.2 of this Amendment.

**"Remove All Conditioning"** means Qwest dispatches personnel and removes all Bridged Taps, as well as any load coils, low pass filters, and range extenders, from a copper unbundled Loop or Subloop.

**"xDSL Capable Loop"** refers to 2-wire and 4-wire copper Loop(s) and copper Subloop(s) that transmit the digital signals needed to provide xDSL Service. Unbundled digital Loops may be provided using a variety of transmission technologies pursuant to the Agreement. For purposes of this Amendment, "xDSL Capable Loops" is used to refer specifically to Loops and Subloops used to provide narrowband or broadband services (or both) to customers served by copper Loops and Subloops (including those that are in active service and those that are deployed in the network as spares).

**"xDSL Service"** – See definition above for Digital Subscriber Loop.

## **9.0 Unbundled Network Elements**

### **9.2.2.3.5 xDSL Capable Loops**

**9.2.2.3.5.1 Assignment of Facilities - xDSL Capable Loops.** Qwest will assign facilities for xDSL Capable Loops using the criteria described in this Section.

**9.2.2.3.5.1.1** Qwest will take into account the NC code and the NCI code when assigning facilities for xDSL Capable Loops.

**9.2.2.3.5.1.2** For Loops 4,000 feet in length or longer, Qwest will assign the Best Available Pair using the criteria described in this Section.

**9.2.2.3.5.1.2.1** Qwest will calculate Estimated Measured Loss ("EML") and assign Loops based on least EML. Qwest will calculate EML in each case using the following steps with respect to Conditioning assumptions:

**9.2.2.3.5.1.2.1.1** First, Qwest will assume no Conditioning is needed. Second, if no qualifying Loop is otherwise available and CLEC pre-approved Conditioning, Qwest will re-calculate EML assuming Conditioning is needed. Finally, if no qualifying Loop is otherwise available and CLEC pre-approved Remove All Conditioning, Qwest will re-calculate EML assuming Remove All Conditioning is needed.

**9.2.2.3.5.1.2.1.2** CLEC's pre-approval of Conditioning will not have any negative impacts on CLEC's service request. Qwest will still attempt to locate and assign facilities that do not require

Conditioning or, when Conditioning is needed, require the least amount of Conditioning.

9.2.2.3.5.1.2.2 In the case of each Loop assigned, Qwest will provide the EML used by Qwest to assign the Loop to CLEC on the Design Layout Record ("DLR").

9.2.2.3.5.1.2.3 For EML purposes, Qwest will measure insertion loss at 196 kHz (except ISDN BRI), as described in this Section. The maximum dB loss parameters used for EML purposes will vary by type of xDSL Service as follows:

9.2.2.3.5.1.2.3.1 For LXR- xDSL Capable Loops, including ADSL and ADSL2+:

EML  $\leq$  81 dB (i.e., 78 dB +3db) at 196 kHz; maximum loss of 81 dB

9.2.2.3.5.1.2.3.2 For 2-wire LX-N xDSL Capable Loops, including HDSL2, G.SHDSL, and E.SHDSL - NCI codes of 02QB9.00H and 02QB5.00G:

EML  $\leq$  31dB (i.e., 28 dB +3db) at 196 kHz; maximum loss of 31 dB

9.2.2.3.5.1.2.3.3 For 4-wire LX-N xDSL Capable Loops, including HDSL4 and G.SHDSL - NCI codes of 04QB9.00H, 04QB5.00G, and 04QB9.00F:

EML  $\leq$  34dB (i.e., 31 dB +3db) at 196 kHz; maximum loss of 34 dB

9.2.2.3.5.1.2.3.4 For ISDN BRI, with NC/NCI codes of LX-N 02QC5.00S:

EML  $\leq$  40 dB at 40 kHz; maximum loss of 40 dB

9.2.2.3.5.1.2.3.5 For all other LX-N xDSL Capable Loops, including Spectrum Management Classes 1-9, Qwest will assign the Best Available Pair using EML measured at 196 kHz (without a maximum dB loss level), except as described in Section 9.2.2.3.5.1.5. A Loop that fails EML or Actual Measured Loss ("AML") for the xDSL Services identified in Sections 9.2.2.3.5.1.2.3.1-9.2.2.3.5.1.2.3.3 may meet EML and/or AML for the xDSL Services identified in this Section 9.2.2.3.5.1.2.3.5.

9.2.2.3.5.1.3 For Loops shorter than 4,000 feet, Qwest will assign facilities using the criteria described in this Section.

9.2.2.3.5.1.3.1 If the facilities available for assignment to the same location do not all have the same cable gauge, Qwest will assign the Best Available Pair pursuant to the criteria in Section 9.2.2.3.5.1.2.

9.2.2.3.5.1.3.2 If the facilities available for assignment all have the same

cable gauge, Qwest will assign any pair in the cross box and terminal, subject to Section 9.2.2.3.5.1.3.3.

**9.2.2.3.5.1.3.3** If CLEC requests multiple Loops to the same location, all Loops will have the same Loop make-up, including Loop lengths.

**9.2.2.3.5.1.3.3.1** If Loops having the same Loop make-up are not available for all of the multiple Loops to the same location, Qwest will assign as many of these Loops as possible with the same Loop make-up, including Loop lengths. For remaining Loops shorter than 4,000 feet, if any, Qwest will assign any pair in the cross box and terminal.

**9.2.2.3.5.1.4** Loops and Subloops that require Conditioning, as well as Loops and Subloops that fail EML, fall out of the automatic facilities assignment process. Qwest will follow the manual steps for copper loop assignment, as applicable.

**9.2.2.3.5.1.4.1.1** If, after the manual steps for copper loop assignment and Conditioning, no loop meets the criteria described above for facilities assignment, Qwest will validate that there is no such loop. Qwest will notify CLEC using the jeopardy notification process. CLEC may supplement its service request either to modify it or to cancel it. If CLEC does not supplement its service request, Qwest will cancel it consistent with the held order terms in the Agreement.

**9.2.2.3.5.1.4.1.2** Regarding Subloops generally, to the extent that processes and procedures for Subloops are different from, or more manual than, the processes and procedures for Loops, the Parties will work together to develop mutually agreeable processes for Subloops.

**9.2.2.3.5.1.5** For Non-Embedded Base xDSL Capable Loops, Qwest will not assign any Loop that exceeds a length of 18,000 feet for LXR- xDSL Capable Loops or 22,000 feet for LX-N xDSL Capable Loops. If, however, changes in technologies or industry standards occur that allow CLEC to reasonably use Loops in excess of one or both of these Loop lengths for providing advanced services, Qwest will assign xDSL Capable Loops in excess of the affected Loop length(s) consistent with those standards when requested by CLEC.

#### **9.2.2.3.5.2 Conditioning - xDSL Capable Loops.**

**9.2.2.3.5.2.1** CLEC may indicate on its service request that it pre-approves Conditioning (Conditioning, and/or Remove All Conditioning) in the event Conditioning is necessary. Upon CLEC pre-approval or approval of Conditioning (except as provided in Section 9.2.2.3.5.2.3), and only if Conditioning is necessary, Qwest will dispatch personnel to Condition the Loop.

**9.2.2.3.5.2.1.1** If CLEC pre-approves Remove All Conditioning and Qwest performs Remove All Conditioning, Qwest will bill only one charge

(the Remove All Conditioning charge) for Conditioning, even though CLEC may also have pre-approved Conditioning on its service request.

9.2.2.3.5.2.1.2 If CLEC has not pre-approved Conditioning, Qwest will obtain CLEC's consent prior to undertaking any Conditioning efforts, except in the scenario described in Section 9.2.2.3.5.2.3.

9.2.2.3.5.2.1.3 See Section 9.2.2.3.5.1.2.1.2 regarding pre-approval and facilities assignment.

**9.2.2.3.5.2.2 Remove All Conditioning During Loop Delivery and Acceptance, When Requested by CLEC but Not Pre-Approved.** (After service order completion, see Sections 9.2.2.3.5.2.4 and 9.2.2.3.5.4 regarding Repair.)

9.2.2.3.5.2.2.1 If CLEC does not indicate on its initial service request that it pre-approves Remove All Conditioning and then, during Loop delivery and acceptance (e.g., upon receiving test results), CLEC requests Remove All Conditioning, if the Qwest technician is still available (so that an additional dispatch is not required), Qwest will perform Remove All Conditioning, and CLEC will pay only the Remove All Conditioning charge for Conditioning.

9.2.2.3.5.2.2.1.1 Qwest will use the Provider Initiated Activity ("PIA") field on the Firm Order Confirmation ("FOC") to communicate changes Qwest made to the service order that are different from what CLEC requested on the service request (i.e., to indicate Remove All Conditioning).

9.2.2.3.5.2.2.1.2 No CLEC service request, supplement, or supplemental service request is required in this circumstance.

9.2.2.3.5.2.2.2 Alternatively (or if the terms of Section 9.2.2.3.5.2.2.1 are not met), if CLEC does not indicate on its initial service request that it pre-approves Conditioning or Remove All Conditioning and then, during Loop delivery and acceptance, CLEC desires such conditioning, CLEC may elect to supplement its service request to request the desired conditioning.

9.2.3.5.2.2.3 If CLEC pre-approves Conditioning but not Remove All Conditioning and Qwest performs Conditioning, Qwest may charge CLEC for both Conditioning and Remove All Conditioning if: (1) Qwest performs Conditioning, (2) the scenario described in Section 9.2.2.3.5.3.2 does not apply, and (3) CLEC later requires Qwest to perform another dispatch and perform Remove All Conditioning.

**9.2.2.3.5.2.3 Remove All Conditioning During Loop Delivery and Acceptance, When Not Approved.** (After service order completion, see Sections 9.2.2.3.5.2.4 and 9.2.2.3.5.4 regarding Repair). In the single scenario described in this Section, Qwest may perform and charge CLEC for Remove All Conditioning, even though CLEC has neither pre-approved nor approved Remove All Conditioning. In this scenario, Qwest will charge only one charge (the Remove

**All Conditioning charge) for Conditioning.**

9.2.2.3.5.2.3.1 The no approval for Remove All Conditioning situation may occur only after both (1) CLEC has pre-approved Conditioning (or, if it did not pre-approve it, CLEC has supplemented its service request to approve it after receiving a jeopardy or reject notice indicating Conditioning is required), and (2) Qwest has performed Conditioning, but such Conditioning does not bring the loop within the applicable dB level and therefore Remove All Conditioning is required to meet the applicable dB level.

9.2.2.3.5.2.3.2 If during Loop delivery and acceptance Qwest conducts the Performance Parameter Tests or other tests as described in Section 9.2.2.3.5.3.1 and, even though the applicable EML was achieved during facilities assignment, actual testing shows that the applicable dB level (as set forth in Section 9.2.2.3.5.4.3 and Attachment 3) cannot be achieved without Remove All Conditioning (i.e., removal of Bridged Taps would bring the Loop within the applicable dB level), Qwest may perform and charge CLEC for Remove All Conditioning, even though CLEC has neither pre-approved nor approved Remove All Conditioning.

9.2.2.3.5.2.3.3 In the scenario described in Section 9.2.2.3.5.2.3.2, if CLEC has enrolled in Provider Test Access ("PTA"), within three (3) business days, Qwest will provide before and after test results in writing to CLEC which confirm that Remove All Conditioning was required to bring the Loop within the applicable dB level. Qwest will provide the before and after test results via PTA, so that CLEC may access them electronically. If Qwest fails to provide complete written before and after test results as described in this Section within three (3) business days, Qwest shall not charge CLEC for performing Remove All Conditioning.

**9.2.2.3.5.2.4 Conditioning During Repair.**

9.2.2.3.5.2.4.1 CLEC may request Conditioning or Remove All Conditioning when submitting a trouble report. No CLEC service request, supplement, or supplemental request is required. Qwest will apply the applicable charges for conditioning, using the rates in Exhibit A to this Amendment.

9.2.2.3.5.2.4.1.1 When Qwest performs Remove All Conditioning during Repair, Qwest will attempt to condition the Loop and clear the trouble within four (4) hours of receipt of the trouble report, except as provided in Section 9.2.2.3.5.2.5.1.2.1. When Qwest performs Remove All Conditioning during Repair, the 4-hour Repair commitment time described in Section 9.2.2.3.5.4.5 does not apply, however. In addition, CLEC's trouble report will be excluded from MR-5 (All Troubles Cleared Within 4 Hours) in the Performance Indicator Definitions (PIDs) in Exhibit B to the Agreement. Qwest will code Remove All Conditioning to an excluded code, which does not identify CLEC or CLEC's customer as the cause of the trouble.

**9.2.2.3.5.2.4.2 Because Embedded Base xDSL Capable Loops, by definition, were installed before the Final Implementation Date of this Amendment, Conditioning will occur in the context of Repair for Embedded Base xDSL Capable Loops.**

**9.2.2.3.5.2.5 Exclusions.** If an Exclusion pursuant to Section 9.2.2.3.5.2.5.1.1 applies, Qwest will notify CLEC of the Exclusion via jeopardy notice, reject notice, or Customer Electronic Maintenance and Repair (CEMR) (or successor system), as applicable, and CLEC may elect to request a different Loop. (If no compatible Loop is available, see Section 9.2.2.3.5.1.4.1.1.) If an Exclusion pursuant to Section 9.2.2.3.5.2.5.1.2 applies, Qwest may not reject the request and must perform Remove All Conditioning, but the charge may vary as described in Section 9.2.2.3.5.2.5.1.2.1. If a dispute arises as to whether an Exclusion applies, Qwest bears the burden of proof.

**9.2.2.3.5.2.5.1 Notwithstanding anything that may be to the contrary in this Amendment, the following Exclusions apply to Conditioning, subject to Section 9.2.2.3.5.2.5.2.**

**9.2.2.3.5.2.5.1.1 Exclusions to Conditioning.** Qwest is not required to remove the following Stub Cable or Bridged Taps, unless Qwest removes them for itself or its retail customers:

**9.2.2.3.5.2.5.1.1.1 Stub Cable.** Stub Cable is short lengths (not to exceed 50 feet) of cable that may have been placed in feeder or distribution plant for ease of future additions or changes. Cable or other plant identified as Bridged Tap in Qwest Loop make up records is not Stub Cable for purposes of this Amendment, unless Qwest promptly provides CLEC with mutually agreeable verifying documentation that demonstrates that the device is Stub Cable as described in this Section 9.2.2.3.5.2.5.1.1.1 and is not Bridged Tap (i.e., the Loop make up records are inaccurate).

**9.2.2.3.5.2.5.1.1.2 Bridged Tap in Inaccessible Plant – Buried.** Inaccessible Plant – Buried means a Direct Buried Splice Enclosure that it is not technically feasible to access.

**9.2.2.3.5.2.5.1.1.3 Bridged Tap in Inaccessible Plant – Safety.** Inaccessible Plant – Safety means specific plant for which access has been restricted on safety grounds by a regulatory agency, such as the Occupational Safety and Health Administration ("OSHA"), or by a Commission or court order addressing the specific plant in issue. If Qwest has a permit to access the plant, with no safety restriction, the plant is not excluded as inaccessible. In the event of an emergency that does not fall within this description but poses safety dangers to personnel, Qwest and CLEC will



work together to resolve the issue on a case-by-case basis.

**9.2.2.3.5.2.5.1.2 Exclusions to Performing Remove All Conditioning for the Remove All Conditioning rate set forth in Exhibit A. When the following circumstances exist, Qwest will perform Remove All Conditioning and charge for it as follows:**

**9.2.2.3.5.2.5.1.2.1 More Than Eight (8) Hours of Qwest Technician Time.** If more than eight (8) hours of technician time is required to perform Remove All Conditioning, Qwest will provide CLEC with a description of work and not-to-exceed quotation for charges for Qwest technician time in excess of eight (8) hours in Qwest's response to CLEC's service request or trouble report. Qwest will provide the quotation as soon as reasonably possible but no later than within four (4) business days of receiving CLEC's service request or within one (1) business day of receiving CLEC's trouble report. To the extent that Qwest incurs fees for permits that are exclusive to CLEC's request for Remove All Conditioning and under which Qwest will perform no other activity, Qwest may include the amount of the permitting fee(s) in the quotation, provided Qwest also provides documentation of the permitting fee use and expense to CLEC. If CLEC accepts the quotation and Qwest performs Remove All Conditioning, Qwest may charge CLEC for the Remove All Conditioning rate described in Exhibit A to this Amendment, technician time in excess of eight (8) hours at the applicable half hourly rate in Exhibit A to the Agreement, and such documented permitting fees, if any.

**9.2.2.3.5.2.5.2 The Exclusions in Section 9.2.2.3.5.2.5 are intended to be narrow exclusions that occur relatively rarely. The Parties have agreed to the negotiated terms in this Amendment, including the rates in Exhibit A, in part based on this assumption made by both Parties.**

**9.2.2.3.5.2.5.2.1 Regarding the Exclusions pursuant to Section 9.2.2.3.5.2.5.1.1, if after implementation of this Amendment this assumption is inconsistent with actual practice, the Parties reserve the right to request amendment of the Agreement, including changes to the rates, terms, and conditions of this Amendment.**

**9.2.2.3.5.2.5.2.2 Regarding the Exclusions pursuant to Section 9.2.2.3.5.2.5.1.2, the Parties agree to meet on an annual basis to review the instances of Remove All conditioning requiring more than Eight (8) hours of technician time to perform, that exceed the greater of 10 instances or ten percent (10%) of all Remove All conditioning performed on behalf of CLEC in a state, and will mutually determine if it is appropriate to make adjustments to the technician time cap, the level of instances requiring greater than**

Eight (8) hours or the rate for Remove All Conditioning.

9.2.2.3.5.2.6 See Section 9.2.3.11 below regarding Conditioning Rate Elements.

**9.2.2.3.5.3 Loop Delivery and Acceptance - xDSL Capable Loops.** Although an estimate is used for facilities assignment purposes, Loop delivery and acceptance will be based upon actual testing.

**9.2.2.3.5.3.1** Qwest will conduct the threshold tests set forth in Attachment 3 to this Amendment, at the levels described in Attachment 3 (Performance Parameter Tests) as needed to deliver a properly working Loop. If Qwest *conducts other tests when performing such testing for itself or its retail customers*, Qwest will also perform those tests for CLEC. When lack of access to CLEC's central office equipment precludes Qwest from performing the same tests that Qwest performs for itself or its retail customers, however, Qwest will perform comparable tests for CLEC.

**9.2.2.3.5.3.1.1** Qwest will perform testing using an insertion loss measured at 196 kHz. The dB loss parameters used to test and validate Actual Measured Loss (AML) will vary by type of xDSL Service, as described in Section 9.2.2.3.5.4.3.1. Qwest will provision a Loop meeting at least the performance parameters specified in Attachment 3.

**9.2.2.3.5.3.1.1.1** If upon testing the Loop does not meet the performance parameters specified in Attachment 3, Qwest will take action to bring the Loop within those parameters before Loop acceptance. If meeting the parameters requires Conditioning, see Section 9.2.2.3.5.2.

**9.2.2.3.5.3.1.1.2** Failure to Meet AML Due to Incorrect Information in Qwest Records, Including Loop Make Up records.

**9.2.2.3.5.3.1.1.2.1** Qwest will attempt to resolve any issues resulting from inaccuracies in Qwest's records (e.g., discrepancies between EML and AML) to ensure timely delivery of a Loop. (Qwest may, for example, correct its records and re-calculate EML based on correct information.) Regardless of any inaccuracies in the records, if AML is met (e.g., AML is below the applicable maximum dB level, as described in Section 9.2.2.3.5.4.3.1), the records discrepancy is not a basis for not delivering the Loop.

**9.2.2.3.5.3.1.1.2.2** If failure to meet AML is both (1) caused by incorrect information in Qwest's records (e.g., Loop make up records), and (2) Qwest cannot resolve the discrepancy (such as an inaccurate indication of Loop length in Qwest records that cannot be resolved), then Qwest will notify CLEC of the discrepancy and the cause of the discrepancy (e.g., the actual Loop length is longer than

the maximum length allowable under AML) before Loop delivery.

9.2.2.3.5.3.1.1.2.2.1 Qwest will send a jeopardy notice to CLEC for the defective Loop, attempt to identify a compatible Loop and, if available, deliver a different Loop that meets the performance parameters. If no other compatible Loop is available after the manual steps for copper Loop assignment, Qwest will provide CLEC with a jeopardy notice for no available facilities.

9.2.2.3.5.3.1.1.2.3 Qwest will correct its records to indicate accurate information.

9.2.2.3.5.3.2 When Qwest completes testing, Qwest will provide CLEC with test results for all of the types of tests performed for each delivered xDSL Capable Loop, including each of the Performance Parameter Tests. This obligation to provide test results applies when CLEC orders xDSL Capable Loops via any Provisioning Option. When Qwest completes its tests, Qwest will provide the test results to CLEC before Loop acceptance in a mutually agreeable manner that allows CLEC either to view posted results electronically or to designate the personnel to receive the results by email, such as via Qwest's Provider Test Access ("PTA") or similar email system. When requested, Qwest will also provide the test results orally.

9.2.2.3.5.3.3 See Sections 9.2.2.3.5.2.2 and 9.2.2.3.5.2.3 regarding Conditioning during Loop delivery and acceptance.

9.2.2.3.5.4 **Repair - xDSL Capable Loops.** Repairs may occur shortly after service order completion or later (e.g., after a CLEC customer has been receiving service from CLEC for a longer period of time). The terms and conditions for Repair are the same for Embedded Base xDSL Capable Loops and Non-Embedded Base xDSL Capable Loops, except as described in Sections 9.2.2.3.5.4.6 and 9.2.2.3.5.4.7. Although an estimate is used for facilities assignment purposes, Repair will be based upon actual testing, including Actual Measured Loss ("AML").

9.2.2.3.5.4.1 Qwest will take into account the NC code and the NCI code when Repairing xDSL Capable Loops.

9.2.2.3.5.4.2 Qwest will conduct the Performance Parameter Tests set forth in Attachment 3 to this Amendment (which is not an exhaustive list) as needed to fully resolve the trouble. If Qwest conducts other tests for itself or its retail customers when performing such testing and Repairs, Qwest will also conduct those tests for CLEC. When lack of access to CLEC's central office equipment precludes Qwest from performing the same tests that Qwest performs for itself or its retail customers, however, Qwest will perform comparable tests for CLEC. Other testing may be needed to repair a Loop so that it performs consistent with industry standards for the type of xDSL Service deployed. If the trouble is not resolved, CLEC may escalate directly to its Qwest service manager, who will immediately escalate internally to ensure needed testing is identified and

conducted to resolve the trouble. Tests to be performed after escalation may include, for example, wideband noise and impulse noise, if not performed earlier as part of the testing outlined above. The Qwest Service Manager will track each escalation for purposes of Section 9.2.2.3.5.4.6.

9.2.2.3.5.4.3 Qwest will perform testing using an insertion loss measured at 196 kHz (except ISDN BRI), as described in Section 9.2.2.3.5.4.3.1. As indicated in Section 9.2.2.3.5.4.3.1, the AML must meet or fall below the maximum AML. In addition, except for ISDN BRI, with NC/NCI codes of LX-N 02QC5.OOS, the AML may be no more than five (5) dB greater than the EML calculated for the Loop.

9.2.2.3.5.4.3.1 The dB loss parameters used to test and validate Actual Measured Loss (AML) will vary as follows:

9.2.2.3.5.4.3.1.1 For LXR- xDSL Capable Loops, including ADSL and ADSL2+:

AML = up to 5 dB greater than EML at 196 kHz; maximum loss of 78 dB, if such limit is within test set capability.

9.2.2.3.5.4.3.1.2 For 2-wire LX-N xDSL Capable Loops, including HDSL2, G.SHDSL, and E.SHDSL - NCI codes of 02QB9.00H and 02QB5.00G:

AML = up to 5 dB greater than EML at 196 kHz; maximum loss of 28 dB

9.2.2.3.5.4.3.1.3 For 4-wire LX-N xDSL Capable Loops, including HDSL4 and G.SHDSL - NCI codes of 04QB9.00H, 04QB5.00G, and 04QB9.00F:

AML = up to 5 dB greater than EML at 196 kHz; maximum loss of 31 dB

9.2.2.3.5.4.3.1.4 For ISDN BRI, with NC/NCI codes of LX-N 02QC5.OOS:

AML  $\leq$  40 dB at 40 kHz; maximum loss of 40 dB

9.2.2.3.5.4.3.1.5 For all other LX-N xDSL Capable Loops, including Spectrum Management Classes 1-9, Qwest will measure AML at 196 kHz (without a maximum dB loss level).

AML = up to 5 dB greater than EML at 196 kHz; no maximum dB loss

9.2.2.3.5.4.3.1.6 Regarding Embedded Base xDSL Capable Loops, see Section 9.2.2.3.5.4.6.1.1.

9.2.2.3.5.4.4 In the case of every Repair of an xDSL Capable Loop, when Qwest completes testing, Qwest will provide CLEC with test results for all of the types of tests performed for each repaired xDSL Capable Loop, including each of the Performance Parameter Tests performed. This obligation to provide test results for Repairs applies regardless of the Provisioning Option used by CLEC when ordering the xDSL Capable Loop. When the tests are performed, Qwest will

make the test results available through Customer Electronic Maintenance and Repair (CEMR) or successor system. CLEC may access the results electronically. When requested, Qwest will also provide the test results to CLEC orally.

9.2.2.3.5.4.4.1 If Qwest fails to provide complete test results as described in Section 9.2.2.3.5.4.4, Qwest shall not code the Repair to CLEC or CLEC's customer when assigning a disposition code. The trouble is considered in Qwest's network for disposition and billing purposes.

9.2.2.3.5.4.5 Qwest's Repair commitment time for xDSL Capable Loops is four (4) hours, except as provided in Section 9.2.2.3.5.2.4.1.1.

9.2.2.3.5.4.6 Qwest and CLEC will meet to review the root cause analysis as performed by Qwest of the troubles escalated pursuant to Section 9.2.2.3.5 and mutually determine if other tests are appropriate to add to Attachment 3 for a type of xDSL Service.

9.2.2.3.5.4.7 See Section 9.2.2.3.5.2.4 regarding Conditioning during Repair.

#### **9.2.2.3.5.5 NC/NCI CODES – xDSL Capable Loops**

9.2.2.3.5.5.1 For Embedded Base xDSL Capable Loops, there may be instances when the NC code and/or NCI code associated with the CLEC customer's xDSL Service [which has been working for the customer, irrespective of the NC/NCI code(s) associated with the customer's xDSL Service] is not the same as the NC code and/or NCI code the Parties will use after the Final Implementation Date. When the need for a Repair occurs or Spectrum Management issues arise (e.g., after a Qwest network maintenance and modernization activity), however, CLEC may desire a change in the NC/NCI code(s) to conform it to the NC/NCI code(s) reflected in this Amendment. Qwest may not decline to proceed with Conditioning or with accepting and working to resolve trouble reports on the grounds that the NC/NCI code(s) are different or need changing for Embedded Base xDSL Capable Loops.

9.2.2.3.5.5.1.1 For Embedded Base xDSL Capable Loops, when submitting a trouble report, CLEC may request that Qwest change the NC code and/or NCI code to the applicable NC code and/or NCI code, such as described in Attachment 2. No CLEC service request, supplement, or supplemental request is needed to change the NC/NCI code(s) before CLEC submits a trouble report or before Qwest performs the Repair. After submitting a trouble report, CLEC will promptly submit a service request to change the NC/NCI codes to the xDSL Service actually deployed on the Embedded Base xDSL Capable Loop. Qwest will implement the change to the NC code and/or NCI code in Qwest's records with no change to the circuit identifier. After processing of the service request, the circuit history in CEMR (or successor system) will reflect the change in NC/NCI code(s) to identify the new NC/NCI code(s). These NC/NCI code changes do not require project handling.

**9.2.2.3.5.5.1.1.1** Regarding future changes to NC/NCI codes, see Section 9.2.2.3.5.5.3.1.

**9.2.2.3.5.5.2** For Non-Embedded Base xDSL Capable Loops, the Parties agree to use the NC/NCI codes as described in Attachment 2 and Section 9.2.2.3.5.5.3. If, after a Non-Embedded Base xDSL Capable Loop is installed, CLEC desires a change in the NC/NCI code(s), CLEC will submit a service request to change the NC/NCI code(s) for Non-Embedded Base xDSL Capable Loops.

**9.2.2.3.5.5.3** After the Final Implementation Date of this Amendment, CLEC will order xDSL Capable Loops using the applicable NC/NCI codes described in Attachment 2 to this Amendment.

**9.2.2.3.5.5.3.1** Particularly as technologies and industry standards change over time, NCI/SECNCI codes may be added or revised and will be available to CLEC. If those NCI/SECNCI codes in any respect replace or modify the codes identified in Attachment 2, Loops installed before Qwest implementation of such new or revised NCI/SECNCI codes will continue with the existing NCI/SECNCI codes as though the code were the new code or, if CLEC desires a change to conform to a revised code, the terms described in Section 9.2.2.3.5.5.1 will apply to changes in NCI/SECNCI codes in these circumstances.

**9.2.2.3.5.5.3.1.1** For example, at the time of execution of this Amendment, Qwest has not implemented the Telcordia NCI/NCI codes for HDSL2 (LX-N 02QB9.00E), so CLEC will order HDSL2 using the NC/NCI code identified in Attachment 2 (LX-N 02QB9.00H). If Qwest later implements the Telcordia NC/NCI codes for HDSL2 (LX-N 02QB9.00E), installed CLEC HDSL2 Loops at that time will continue to be treated as HDSL2 Loops (for all purposes, including Repair and Spectrum Management), even though Qwest begins using different NC/NCI codes for HDSL2. Installed CLEC HDSL2 customers will be the equivalent of Embedded Base xDSL Capable Loops at that point for this purpose. See Section 9.2.2.3.5.5.1. Qwest may not withhold services (e.g., Conditioning or trouble report submission) on the grounds that code(s) need changing (such as via CLEC service request, supplement or supplemental service request, or a project conversion) in this circumstance.

## **9.2.2.8 Loop Qualification/Make Up Information or Tool.**

**9.2.2.8.8** Qwest will provide CLEC with: (1) the formula(s)/algorithm(s) that Qwest uses for calculation of EML, and/or (2) a Loop Qualification tool that calculates insertion loss for xDSL Capable Loops, using the same formula(s)/algorithm(s) that Qwest uses for calculation of EML.

## **9.2.3 Unbundled Loop Rate Elements - xDSL Capable Loops**

### **9.2.3.11 Rate Elements - Conditioning**

**9.2.3.11.1** The rates for the following rate elements for Conditioning of xDSL Capable Loops are set forth in Exhibit A of this Amendment.

#### **9.2.3.11.1.1 Conditioning.**

#### **9.2.3.11.1.2 Remove All Conditioning.**

9.2.3.11.2 The rates for the rate elements in Section 9.2.3.11.1 do not apply unless Qwest dispatches a technician (or other personnel) and performs the specified Conditioning. If, for example, Qwest's records indicate that Conditioning is required but in fact the records are incorrect and therefore none is performed, no Conditioning charge applies.

9.2.3.11.3 Each of the rates for the rate elements in Section 9.2.3.11.1 may be applied no more than one time per Loop per CLEC customer at any time before disconnection. If, for example, CLEC approves Conditioning, Qwest removes a Near-End Bridged Tap, and Qwest charges the Conditioning charge, Qwest may not charge the Conditioning charge again if later it is discovered that a single Bridged Tap greater than 2000 feet requires removal, because removal of a single Bridged Tap greater than 2000 feet is included in the one-time Conditioning charge. Qwest will track payment of Conditioning charges.

9.2.3.11.4 Conditioning is not a prerequisite to Remove All Conditioning. If CLEC pre-approves Remove All Conditioning or CLEC requests only Remove All Conditioning and Qwest performs Remove All Conditioning, only the Remove All Conditioning charge applies for Conditioning.

9.2.3.11.5 If, as part of Conditioning, Qwest removes all Bridged Taps on the Loop, only the applicable Conditioning charge applies for Conditioning. The fact that all Bridged Taps were removed is not a basis for charging the Remove All Conditioning charge in this situation because, although all of the Bridged Taps were removed, they were within the definition of Conditioning. For example, if the only Bridged Tap on a Loop is a Near-End Bridged Tap, removal of that Bridged Tap (which falls within the Conditioning definition) does not result in a Remove All Conditioning charge simply because the only (i.e., all) Bridged Tap on the Loop was removed.

9.2.3.11.6 The need to perform Conditioning is considered trouble in Qwest's network for purposes of disposition coding and billing, except as provided in Section 9.2.2.3.5.2.4.1.1. When Qwest charges CLEC the rate(s) in Exhibit A for Conditioning, Qwest may not also cause charges such as Maintenance of Service charges to apply by coding the need for Conditioning to CLEC or CLEC's customer.

### **9.2.6 Spectrum Management - xDSL Capable Loops**

9.2.6.10 Advanced services Loop technology will be deployed, and spectrum and binder groups will be managed, in accordance with the Act and the Agreement.

9.2.6.11 See Section 9.2.2.3.5.5 regarding NC/NCI codes.

## **12.4 Maintenance and Repair - xDSL Capable Loops**

**12.4.1.6.3** When CLEC elects not to perform trouble isolation and CLEC requests Qwest to perform optional testing, Qwest will perform at least the Performance Parameter Tests described in Section 9.2.2.3.5.3.1 and Attachment 3 for xDSL Capable Loops as needed to isolate and fully resolve the trouble. If trouble is isolated to the Qwest network, Qwest will proceed to perform trouble isolation and work to resolve the trouble. At the time Qwest completes testing, Qwest will provide the test results to CLEC electronically. When CLEC does not submit the trouble report electronically, Qwest will contact CLEC by telephone to provide test results at the time Qwest completes testing. Qwest will charge CLEC the applicable optional testing charge.

**12.4.1.6.4** Optional testing charges do not apply when CLEC performs trouble isolation. When CLEC submits a trouble report to Qwest with test results isolating trouble to the Qwest network, Qwest will not require CLEC to authorize optional testing charges and Qwest will not decline to proceed with Repair on the grounds that CLEC has not authorized optional testing. For xDSL Capable Loops, CLEC test results isolating trouble to Qwest's network may, for example, result from signal-to-noise ratio, Loop attenuation, margin, circuit resistance, or any of the tests identified in Attachment 3, and may include tests results such as those indicating bad splices, wet cable, opens, grounds, shorts, or Bridged Tap. When CLEC reports that CLEC has isolated trouble to the Qwest network, Qwest will proceed to perform trouble isolation and work to resolve the trouble.

**12.4.3.5** Qwest Maintenance and Repair and routine test parameters and levels will be in compliance with Qwest's Technical Publications, which will be consistent with Telcordia's General Requirement Standards for Network Elements, Operations, Administration, Maintenance and Reliability and/or the applicable ANSI standard.



### Exhibit A (Conditioning)

[illegible]

**ATTACHMENT 2:**  
**Qwest NC/NCI Code Combinations for LX-N and LXR- xDSL Capable Loops<sup>1</sup>**

NC Code	NCI Code		BRIEF DESCRIPTION
	Qwest CO-NI	Customer EU-NI	
ADVANCED DIGITAL TRANSPORT – SPECTRUM MANAGEMENT COMPATIBLE			
LX-N	02QB5.001	02DU5.001	Spectrum Management Class 1
LX-N	02QB5.002	02DU5.002	Spectrum Management Class 2
LX-N	02QB5.003	02DU5.003	Spectrum Management Class 3
LX-N	04QB5.003	04DU5.003	Spectrum Management Class 3
LX-N	02QB5.004	02DU5.004	Spectrum Management Class 4
LX-N	02QB9.005	02DU9.005	Spectrum Management Class 5
LX-N	02QB9.006	02DU9.006	Spectrum Management Class 6
LX-N	02QB5.007	02DU5.007	Spectrum Management Class 7
LX-N	02QB5.008	02DU5.008	Spectrum Management Class 8
LX-N	02QB9.009	02DU9.009	Spectrum Management Class 9
LX-N	04QB5.00F	04DU5.00F	Spectrum Management HDSL4. Technology Specific. Transmission System
LX-N	02QB5.00G	02DU5.00G	Spectrum Management G. SHDSL, E.SHDSL Technology specific. Transmission System
LX-N	04QB5.00G	04DU5.00G	Spectrum Management G. SHDSL Technology Specific. Transmission System
LX-N	02QB5.00S	02DU5.00S	Spectrum Management 281QSDSL.

<sup>1</sup> References to a type of xDSL Service (e.g., ADSL, HDSL) are general and include successive xDSL Services (e.g., ADSL2+, HDSL2).

NC Code	NCI Code		BRIEF DESCRIPTION
	Qwest CO-NI	Customer EU-NI	
			Technology Specific Transmission System
LX-N	04QB5.00S	04DU5.00S	Spectrum Management 281QSDSL. Technology specific. Transmission System
<b>DIGITAL SUBSCRIBER LINE BASIC RATE ISDN – DSL (ISDN BRI) COMPATIBLE</b>			
LX-N	02QC5.00S	021S5.N	Digital Subscriber Line with 2B1Q Signaling Format Compatible Loop
<b>HIGH-BIT-RATE DIGITAL SUBSCRIBER LINE (HDSL) COMPATIBLE</b>			
LX-N	02QB9.00H	02DU9.00H	HDSL and HDSL2 Compatible Loop, Metallic Facility
LX-N	04QB9.00H	04DU9.00H	HDSL and HDSL2 Compatible Loop, Metallic Facility
<b>ASYMMETRIC DIGITAL SUBSCRIBER LINE (ADSL) COMPATIBLE</b>			
LXR-	02QB9.00A	02DU9.00A	Revised Resistance Design (RRD)n Non-Loaded Loop with ANSIT1.413 DMT Signaling Format
LXR-	02QB9.01A	02DU9.01A	RRD, Non-Loaded Loop with ANSIT1.413 DMT Signaling Format and one POTS Channel
LXR-	02QB9.00C	02DU9.00C	RRD, Non-Loaded Loop with CAP Signaling Format
LXR-	02QB9.01C	02DU9.01C	RRD, Non-Loaded Loop with CAP Signaling Format one POTS Channel
<b>UNBUNDLED DISTRIBUTION LOOPS</b>			
LX-N	02QE5.001	02DU5.001	Distribution Loop, without loading coils, Spectrum Management Class 1
LX-N	02QE5.002	02DU5.002	Distribution Loop, without loading coils, Spectrum Management Class 2
LX-N	02QE5.003	02DU5.003	Distribution Loop, without loading coils, Spectrum Management Class 3

NC Code	NCI Code		BRIEF DESCRIPTION
	Qwest CO-NI	Customer EU-NI	
LX-N	02QE5.004	02DU5.004	Distribution Loop, without loading coils, Spectrum Management Class 4
LX-N	02QE9.005	02DU9.005	Distribution Loop, without loading coils, Spectrum Management Class 5
LX-N	02QE9.006	02DU9.006	Distribution Loop, without loading coils, Spectrum Management Class 6
LX-N	02QE5.007	02DU5.007	Distribution Loop, without loading coils, Spectrum Management Class 7
LX-N	02QE5.008	02DU5.008	Distribution Loop, without loading coils, Spectrum Management Class 8
LX-N	02QE9.009	02DU9.009	Distribution Loop, without loading coils, Spectrum Management Class 9
LX-N	02QE9.005	02DUM.LS5	Distribution Loop, without loading coils, Spectrum Management Class 5 and one POTS Channel

**ATTACHMENT 3:**  
**xDSL CAPABLE LOOP PERFORMANCE PARAMETER TESTS**

Note: As between Attachment 1 and Attachment 3, the terms of Attachment 1 control, should any discrepancy or apparent discrepancy be identified. See Attachment 1 regarding Conditioning.

Required Tests	Expected Field Measurement Results	Notes
Loop Length	Actual (Capacitive)	
Load Coils	None	
Opens	None	
Grounds	None	
Shorts	None	
Bridge Tap	<p>LX-N Maximum: Total Length &lt;2500 ft Single Tap Length &lt; 2000ft</p> <p>LXR- Maximum: Total Length &lt;2500 ft Single Tap Length &lt; 2000 ft No Near End /Far End BT( &gt;1000 ft)</p> <p>Remove All Maximum: None</p>	See Exclusions
1004 Hz Loss	< -8.5dBm	
196 kHz Loss	<p>Actual Measured Loss (AML): Maximum AML = EML + 5 dB</p> <p>LX-N Maximum dB Loss: 2- wire (e.g., NCI codes of 02QB9.00H and 02QB5.00G) &lt;28.dB</p> <p>4- wire (e.g, NCI codes of 04QB9.00H, 04QB5.00G, and 04QB9.00F) &lt;31.dB</p> <p>LXR- Maximum dB Loss: LXR- &lt;78.dB</p>	<78 dB if such limit is within test set capability
40 kHz Loss	ISDN BRI <40.dB	
Insulation Resistance	<p>Tip - Ground &gt; 3.3 Meg Ohms Ring - Ground &gt; 3.3 Meg Ohms Tip - Ring &gt; 3.3 Meg Ohms</p>	

Foreign Voltage - DC	Tip - Ground < 8 VDC Ring - Ground < 8 VDC Tip - Ring < 8 VDC	
Foreign Voltage - AC	Tip - Ground < 50VAC Ring to Ground < 50VAC	
Noise (C - Message)	< 23 dBrnC Far end 600 Ohm Termination	< 20 dBrnC Acceptable, >20 < 30 dBrnC Marginal, > 30 Unacceptable
Noise (C - Notch)	< 45 dB	1004 Hz, 0 dBm Transmit
Line Balance	< to 10%	The length of the Tip side of the line compared to the length of the Ring to 10% difference
Longitudinal Balance	965 Type Meter <= <= 50 dB @ 196khz Other Meters <= 40 dB @ 196khz	
Power Influence	<= 90 dBmC	
D-Mark Tagged	Yes	

# ORIGINAL NEW APPLICATION

## BEFORE THE ARIZONA CORPORATION COMMISSION

**KRISTIN K. MAYES**  
Chairman  
**GARY PIERCE**  
Commissioner  
**PAUL NEWMAN**  
Commissioner  
**SANDRA D. KENNEDY**  
Commissioner  
**BOB STUMP**  
Commissioner

2010 MAY 13 P 3:38

Arizona Corporation Commission

**DOCKETED**

MAY 13 2010

DOCKETED BY

nr

**JOINT NOTICE AND APPLICATION  
OF QWEST CORPORATION, QWEST  
COMMUNICATIONS COMPANY,  
LLC, QWEST LD CORP., EMBARQ  
COMMUNICATIONS, INC. D/B/A  
CENTURY LINK  
COMMUNICATIONS,  
EMBARQ PAYPHONE SERVICES,  
INC. D/B/A CENTURYLINK, AND  
CENTURYTEL SOLUTIONS, LLC  
FOR APPROVAL OF THE PROPOSED  
MERGER OF THEIR PARENT  
CORPORATIONS QWEST  
COMMUNICATIONS  
INTERNATIONAL INC. AND  
CENTURYTEL, INC.**

DOCKET NO.

T-01051B

T-01051B-10-0194  
T-02811B-10-0194  
T-04190A-10-0194  
T-20443A-10-0194  
T-03555A-10-0194  
T-03902A-10-0194

### JOINT NOTICE AND APPLICATION FOR EXPEDITED APPROVAL OF PROPOSED MERGER

The Arizona telephone operating subsidiaries of Qwest Communications International, Inc. ("QCII") Qwest Corporation ("QC"), Qwest Communications Company LLC ("QCC"), and Qwest LD Corp., ("QLDC"), (collectively "Qwest") and the Arizona telephone operating subsidiaries of CenturyTel, Inc. ("CenturyLink"<sup>1</sup>), Embarq Communications, Inc. d/b/a CenturyLink Communications, Embarq Payphone Services, Inc. d/b/a CenturyLink, and CenturyTel Solutions, LLC, (collectively "CenturyLink") jointly submit this Joint Notice of

<sup>1</sup> CenturyTel, Inc. will change its name to CenturyLink, Inc. with shareholder approval on May 20, 2010.

**EXHIBIT**

JA-1

ADMITTED

1 Proposed Merger and Application.<sup>2</sup> With this Joint Notice and Application, Qwest and  
2 CenturyLink request expedited approval by the Arizona Corporation Commission  
3 ("Commission") of the proposed merger, which will indirectly transfer control of QCII's  
4 operating subsidiaries to CenturyLink. This transaction meets the requirements of A.A.C. R14-  
5 2-801 *et seq.* ("Affiliated Interests Rules") and, A.R.S. § 40-285 if applicable, and all other  
6 applicable law. It will result in a combined company with greater network and financial  
7 resources to provide voice, broadband data, and other advanced communications services to  
8 Arizona customers. The combined company will have the national breadth and local depth to  
9 provide a compelling array of products and services to its customers. The Applicants therefore  
10 request that the Commission approve this Application expeditiously to allow timely  
11 consummation of the Transaction. In support, the Applicants state as follows:

## 12 13 I. INTRODUCTION

14  
15 1. The Transaction combines two leading communications companies with  
16 customer-focused, industry-leading capabilities, together with complementary networks and  
17 operating footprints. The Transaction is a stock-for-stock transaction that requires no new  
18 financing or refinancing and adds no new debt. It will provide the combined company with  
19 greater financial resources and access to capital enabling it to invest in networks, systems and  
20 employees that can reach more customers with a broad range of innovative products and voice,  
21 data and entertainment services over an advanced network. The combination creates a robust,  
22 national, approximately 180,000 mile fiber network that will allow CenturyLink to meet  
23 increasing data traffic demands for robust content and to deliver strategic and customized  
24 product solutions to business, wholesale, and government customers throughout the nation by

25 <sup>2</sup> CenturyTel, Inc. and Qwest Communications International, Inc. are not public service  
26 corporations as defined in Article 15, Section 2 of the Arizona Constitution. The telephone  
operating subsidiaries named in the caption are public service corporations.



1 combining Qwest's significant national fiber-optic network and data centers and CenturyLink's  
2 core fiber network. The Transaction provides the financial, managerial and operational strength  
3 to better position the combined company to offer more customers the full array of broadband  
4 products and video entertainment that will enable the combined company to compete against  
5 cable companies and technology substitution within its local regions. The Transaction is in the  
6 public interest and the parties seek expedited review.

## 7 8 II. THE TRANSACTION

9  
10 2. On April 21, 2010, QCII, CenturyLink and SB44 Acquisition Company  
11 ("Acquisition Company") entered into an Agreement and Plan of Merger ("Merger Agreement")  
12 which describes the transaction subject to this Application ("Transaction").<sup>3</sup> CenturyLink is a  
13 publicly traded holding company with incumbent local exchange operations in 33 states.  
14 CenturyLink and Qwest both have ILEC operations in 10 states. However, CenturyLink does  
15 not have ILEC operations in Arizona. Qwest Communications International, Inc. is a publicly  
16 traded holding company with incumbent local exchange operations in 14 states and nationwide  
17 competitive local exchange and interexchange operations. Acquisition Company is a direct  
18 wholly-owned subsidiary of CenturyLink created to effectuate this Transaction. Under the terms  
19 of the Merger Agreement, QCII and Acquisition Company will merge, after which QCII will be  
20 the surviving entity and the separate corporate existence of Acquisition Company will cease.<sup>4</sup>  
21 Also following completion of the Transaction, four directors from the QCII Board will be added  
22 to the CenturyLink Board of Directors, including Edward A. Mueller, QCII's Chairman and

23  
24  
25 <sup>3</sup> A copy of the Merger Agreement is available at  
<http://www.centurylinkqwestmerger.com/downloads/sec-filings/Qwest-8K%204-22-10.pdf>, and  
is incorporated by reference

26 <sup>4</sup> QCII will adopt the By-Laws and Certificate of Incorporation of Acquisition Company.

1 Chief Executive Officer (CEO). This addition will increase the number of CenturyLink directors  
2 from 13 pre-Transaction to 17 post-Transaction.

3 3. Under the terms of the Merger Agreement, QCII will become a wholly-owned,  
4 first tier subsidiary of CenturyLink. Exhibit A attached to this Application depicts the pre- and  
5 post-Transaction corporate structure. As shown, there will be no change in corporate structure of  
6 the respective CenturyLink and Qwest operating entities as a result of the Transaction. QCII's  
7 operating subsidiaries, QC, QCC, and QLDC will remain subsidiaries of QCII. Further, because  
8 this Transaction is a combination of the parent companies only, it is not a transaction in which  
9 local exchanges, companies, or assets are being sold, combined or transferred to a new provider.

10 4. The Transaction is a tax free, stock-for-stock business deal with no new debt or  
11 refinancing required. Shareholders of QCII will receive 0.1664 shares of CenturyLink common  
12 stock for each share of QCII common stock owned at closing. Upon closing, the shareholders of  
13 pre-merger CenturyLink will own approximately 50.5% of post-merger CenturyLink and the  
14 shareholders of pre-merger QCII will own approximately 49.5% of post-merger CenturyLink.  
15 CenturyLink will issue new stock to acquire QCII; it is not paying cash or financing the  
16 Transaction through debt.

17 5. The Transaction is a straightforward combination and strengthening of companies  
18 that will maintain and enhance current operations. In fact, it has none of the financial or tax  
19 structure complexities or characteristics of other recent transactions that have been the subject of  
20 criticism by some state commissions. To the contrary, this Transaction does not involve the sale  
21 and transfer of regulated companies, exchanges or assets from one entity to another or the  
22 assumption of new debt or refinancing.

23 6. The Transaction contemplates a parent-level transfer of control of QCII only. QC,  
24 QCC, QLDC, Embarq Communications, Inc. d/b/a CenturyLink Communications, Embarq  
25 Payphone Services, Inc. d/b/a CenturyLink, and CenturyTel Solutions, LLC will continue as  
26 separate certificated carriers and each will continue to have the requisite managerial, technical

1 and financial capability to provide services to its customers. Immediately upon completion of  
2 the Transaction, end users and wholesale customers will continue to receive service from the  
3 same carrier, at the same rates, terms and conditions and under the same tariffs, price plans,  
4 interconnection agreements, and other regulatory obligations as immediately prior to the  
5 Transaction; as such, the Transaction will be seamless to the customers. Any subsequent service  
6 or price changes will be made, just as they are now, in accordance with all applicable rules and  
7 laws.<sup>5</sup> Moreover, the Transaction does not alter or change the jurisdiction of the Commission  
8 over the certificated service providers.

### 10 III. PARTIES

#### 11 A. DESCRIPTION OF CENTURYLINK

12  
13 7. CenturyLink is a publicly traded Louisiana corporation with headquarters at 100  
14 CenturyLink Drive, Monroe, Louisiana. CenturyLink is included in the Fortune 500's list of  
15 America's largest corporations. CenturyLink is a leading provider of high-quality voice and  
16 broadband services over its advanced communications networks to consumers and businesses in  
17 33 states.<sup>6</sup> CenturyLink serves approximately 7 million access lines nationwide, 2.2 million  
18 broadband subscribers, and over 553,000 video subscribers.<sup>7</sup> CenturyLink has a successful  
19 history of providing services to rural America and has evolved into a company that serves every

20 <sup>5</sup> In view of the current rapidly changing communications market, any provider, including post-  
21 Transaction CenturyLink, must constantly review its pricing strategy and product mix to respond  
22 to marketplace demands. While rates, terms and conditions will be the same immediately after  
23 the Transaction as immediately before the Transaction, prices and product mixes necessarily will  
change over time as marketplace, technology, and business demands dictate. The affected  
entities will make such changes only following full compliance with all applicable rules and  
laws.

24 <sup>6</sup> CenturyLink is an incumbent local exchange provider in Louisiana, Washington, Oregon,  
25 Idaho, Montana, Wyoming, Nebraska, Minnesota, Iowa, New Mexico, Colorado, Nevada, Ohio,  
Indiana, Michigan, Illinois, Wisconsin, Pennsylvania, New Jersey, Tennessee, Virginia, North  
Carolina, South Carolina, Florida, Georgia, Alabama, Mississippi, Texas, Arkansas, Oklahoma,  
Missouri, Kansas, and California.

26 <sup>7</sup> As of December 31, 2009.

1 segment of the consumer and business markets through a complete array of voice and data  
2 services.

3       8. CenturyLink has a local, community-based approach to serving its customers.  
4 This community-based approach focuses on allocating decision-making and accountability close  
5 to its customer base, under the philosophy that services, bundles or pricing should suit the  
6 customer needs of the particular local area or market. This local market focus allows flexibility  
7 and responsiveness in the development of products and bundles to be offered in different  
8 geographic areas and has been a proven success. CenturyLink intends to continue and extend its  
9 local market focus under the newly combined company.

10       9. CenturyLink has an established track record of successfully integrating  
11 companies, including its most recent acquisition of Embarq Corporation. Previous to the  
12 Embarq acquisition, CenturyLink had executed on five other transactions wherein it acquired  
13 more than two million access lines. In addition, CenturyLink had acquired significant fiber  
14 assets in 2003 and 2005 which are now part of a nationwide, core fiber network that is a key  
15 enabler for IPTV and other data traffic. CenturyLink employs a best-in-class view towards  
16 company integration, combining the finest talent and most efficient and successful practices of  
17 the two merging companies. In consideration of the talent pool of employees, services,  
18 innovation, and commitment to service quality that currently resides in both CenturyLink and  
19 Qwest, the combined and integrated company will have an augmented supply of human and  
20 technological resources to service rural and urban customers.

21       10. Arizona has not been a market in which CenturyLink has established a significant  
22 presence. Embarq Communications, Inc., d/b/a CenturyLink Communications, is authorized by  
23 this Commission to provide resold long distance services and has less than 200 PIC'd lines in  
24 this state. Embarq Payphone Services, Inc. d/b/a CenturyLink, is authorized to provide  
25 payphone services; however, it has less than 25 payphones in service in Arizona. CenturyTel  
26

1 Solutions, LLC is authorized to provide resold long distance services and competitive local  
2 exchange services; however, it does not currently serve customers in Arizona.

3 **B. DESCRIPTION OF QWEST**

4 11. QCII is a publicly traded Delaware corporation, with headquarters at 1801  
5 California Street, Denver, Colorado., QCII's operating subsidiaries offer a complete suite of  
6 communications services to consumers and businesses, including local, long distance, high speed  
7 data, and, through sales relationships with Verizon Wireless and DIRECTV, wireless and video  
8 services. QCII is in the Fortune 500's list of America's largest corporations.<sup>8</sup> With its industry-  
9 leading national fiber-optic network and world-class customer service, Qwest is the choice of  
10 95% of Fortune 500 companies, offering a full suite of network, data and voice services for small  
11 businesses, large businesses, government agencies and wholesale customers.

12 12. As a subsidiary of QCII, QC provides incumbent local exchange services in 14  
13 states, serving approximately 10.3 million total access lines.<sup>9</sup> QC provides local exchange  
14 services and interexchange services in Arizona, serving approximately 1,457,280 retail access  
15 lines. QC provides regulated retail and wholesale services under the jurisdiction of this  
16 Commission, as well as interconnection services to CLECs through numerous interconnection  
17 agreements approved by this Commission.

18 13. QCC is authorized by this Commission to provide long distance and competitive  
19 local exchange services. In addition to Arizona, QCC provides facilities-based and resold  
20 interexchange and competitive local exchange operations nationwide.<sup>10</sup>

21  
22  
23 <sup>8</sup> QCII's most recent 10K filing to the Securities and Exchange Commission is a public  
24 document and is available at: <http://investor.qwest.com/qcii-sec-filings>, which is incorporated  
25 by reference.

26 <sup>9</sup> Access lines as of December 31, 2009. In addition to Arizona, Qwest is an incumbent local  
exchange provider in Colorado, Washington, Oregon, Idaho, Montana, Wyoming, Nebraska,  
North Dakota, South Dakota, Minnesota, Iowa, Utah, and New Mexico.

<sup>10</sup> QCC is authorized to provide interexchange services in all states and is authorized as a  
competitive local exchange carrier in the District of Columbia and all states except Alaska.

1        14.    The Commission has also authorized QLDC to provide resold interexchange  
2 services. QLDC is the entity formed by Qwest as part of the approval processes under Section  
3 271 and 272 of the Telecom Act to provide interLATA services originating in Arizona.<sup>11</sup>

4        15.    Communications and correspondence for the proceeding herein should be sent to  
5 the following individuals:

6  
7 To CenturyLink:

8        Linda C. Stinar  
9        Director Regulatory Affairs – CenturyLink  
10       6700 Via Austi Parkway,  
11       Las Vegas, NV 89119<sup>12</sup>  
12       Voice (702) 244-7318  
13       linda.c.stinar@centurylink.com

14       With a copy to:

15       Jeffrey W. Crockett  
16       SNELL & WILMER, L.L.P.  
17       One Arizona Center  
18       400 East Van Buren  
19       Phoenix, Arizona 85004-2202  
20       jcrockett@swlaw.com

21       Kevin K. Zarling  
22       Senior Counsel, CenturyLink  
23       400 W. 15<sup>th</sup> Street, Suite 315  
24       Austin, Texas 78701  
25       Kevin.K.Zarling@CenturyLink.com

26 To Qwest:

27       David L. Ziegler  
28       Assistant Vice President-Public Policy, Qwest  
29       20 E. Thomas Rd, 16<sup>th</sup> Floor  
30       Phoenix, Arizona 85012  
31       David.L.Ziegler@qwest.com

32 <sup>11</sup> The Commission has previously approved the merger of QLDC into QC. Decision No.  
33 70706. This Application does not amend the request for approval of merger of QLDC and QC or  
34 the order approving it. The merger is still pending.

35 <sup>12</sup> Prior to May 28, 2010, correspondence for the CenturyLink representative should be sent to:  
36 330 South Valley View Boulevard, Las Vegas, Nevada 89107

1 With a copy to:

2 Norman G. Curtright  
3 Associate General Counsel, Qwest  
4 20 E. Thomas Rd., 16<sup>th</sup> Floor  
Phoenix, Arizona 85012  
Norm.Curtright@qwest.com

5  
6 **IV. APPROVALS REQUIRED AND STANDARD OF REVIEW**

7  
8 16. A.A.C. R14-2-803(B) provides that the Commission shall determine whether to  
9 hold a hearing on a notice of intent to reorganize within 60 days from the receipt of the Notice,  
10 and *determine whether to hold a hearing on the matter or approve the organization or*  
11 *reorganization without a hearing.* The standard of review is provided in A.A.C. R14-2-803(C):  
12 "At the conclusion of any hearing, the Commission may reject the proposal if it determines that  
13 it would impair the financial status of the public utility, otherwise prevent it from attracting  
14 capital at fair and reasonable terms, or impair the ability of the public utility to provide safe,  
15 reasonable and adequate service."

16 17. A.R.S. § 40-285 provides in pertinent part that, "A public service corporation  
17 shall not sell, lease, assign, mortgage or otherwise dispose of or encumber the whole or any part  
18 of its . . . system . . . nor shall such corporation merge such system or any part thereof with any  
19 other public service corporation without first having secured from the commission an order  
20 authorizing it so to do." In addition, A.R.S. § 40-285(D) provides that "[a] public service  
21 corporation shall not purchase, acquire, take or hold any part of the capital stock of any other  
22 public service corporation organized or existing under the laws of this state without a permit  
23 from the commission." In reviewing transactions under the statute the Commission applies a  
24 "public interest" standard of review. Because QCII and CenturyTel, Inc. are not public service  
25 corporations, the Applicants believe A.R.S. § 40-285 does not apply to the Transaction.  
26 However, should the Commission determine that the statute applies, the Applicants respectfully

1 request that approval be granted under the statute. The Applicants seek approval of the  
2 Transaction under all applicable Commission rules and Arizona laws.

3 18. As addressed below, the Transaction and the resulting transfer of control of the  
4 parent of QC, QCC, and QLDC satisfy all applicable criteria.

5  
6 **V. THE TRANSACTION IS IN THE PUBLIC INTEREST**  
7

8 19. The Transaction is in the public interest and will provide benefits to consumers of  
9 the combined company without any countervailing harms. The communications industry has  
10 changed dramatically in the last several years, and the industry continues to experience change at  
11 a frenetic pace. Competition, and particularly intermodal competition, is widespread with  
12 wireless and wireline carriers competing vigorously for customers. Local wireline carriers face  
13 increasing competition from other providers of voice services and from cable operators providing  
14 voice, video and data offerings. As a result of this robustly competitive market environment and  
15 the rapidly changing fundamentals of the wireline business, carriers such as Qwest and  
16 CenturyLink must adapt to compete more effectively. Wireline businesses now require greater  
17 strategic flexibility to bring new products and expanded services to the marketplace more  
18 quickly and to enhance customer service. These evolving market dynamics place unique  
19 pressures on companies such as Qwest and CenturyLink. The financial strength and flexibility,  
20 the more diverse mix of product offerings, the increased scale and stronger product portfolio and  
21 the approximately 180,000-mile fiber network combine to position the post-Transaction  
22 CenturyLink to better respond to customer demand and effectively compete and provide viable  
23 service and product options for its customer base whether business, wholesale, government, or  
24 residential.

25 20. Qwest and CenturyLink have complementary local and long distance markets and  
26 a strong tradition of customer-centric approach. CenturyLink's regional operating model and



1 targeted marketing focus coupled with Qwest's industry-leading network and strong business,  
2 government and wholesale focus will position the combined company to improve and expand  
3 deployment of innovative IP products and services to business customers, to expand broadband  
4 availability and increased broadband speeds to consumers, to deploy additional fiber-to-the-cell  
5 capabilities, and to offer new video choices to better serve customers.

6       21. The communications industry has been and is expected in the future to be the  
7 subject of rapid and fundamental changes in technology, customer preferences, and the  
8 competitive landscape. Rapid changes in technology and customer preferences require equally  
9 rapid responses and execution strategies by telecommunications carriers. To respond rapidly and  
10 succeed most effectively in this competitive market environment, carriers must have a strategic  
11 focus on providing products and services that differentiate them in the market, and they need  
12 sufficient scale to execute upon their strategic focus. Even a carrier that knows its customers'  
13 preferences cannot compete effectively in today's marketplace without sufficient size and scope  
14 to match those preferences with suitable products or services offered at affordable rates. The  
15 Transaction will result in a combined enterprise that can achieve greater economies of scale and  
16 scope than the two companies operating independently. This, in turn, will enhance the ability of  
17 the post-Transaction enterprise to focus more strategically and rapidly respond to customer  
18 preferences in providing a full portfolio of quality, advanced communications services that will  
19 differentiate the company in the markets it serves.

20       22. The Arizona operations will be strengthened as a result of the Transaction. QC  
21 will continue in its current corporate existence and will retain its levels and standards of  
22 technical and managerial expertise over both rural and urban exchanges in the state; yet, its  
23 provisioning of products and services will be augmented by the combined company's stronger  
24 financial position and balance sheet. Additionally, with CenturyLink's distinctive expertise in  
25 serving smaller, rural areas and Qwest's industry-leading national fiber-optic network, data  
26 centers, and enterprise business experience, the post-Transaction enterprise will be positioned to

1 capitalize on its collective knowledge of its local customers' preferences and to deliver  
2 innovative technology and product offerings to both its urban and rural markets. Customers will  
3 benefit from increased access to those offerings, and the post-merger CenturyLink will benefit  
4 from retaining and attracting customers whose needs are satisfied by its offerings, service quality  
5 and customer care. The public interest will be served by the Transaction as it will allow the new  
6 company to bring to bear the combined resources of Qwest and CenturyLink on the shared,  
7 singular focus of delivering a full portfolio of services that meet the targeted needs of the  
8 consumer, business, and wholesale customers served.

9       23. Consumers of communications services, including both residential consumers and  
10 businesses, have more choices than ever before in the market for local and long distance calling,  
11 high speed Internet and other data, video, and wireless services. Intermodal competition to  
12 provide these services is now widespread. The two companies combined will be a national  
13 telecommunications company serving approximately 17 million access lines, over 5 million  
14 broadband customers, over 1.4 million video subscribers, and 850,000 wireless customers.<sup>13</sup> As  
15 such, the Transaction will enable the combined company to become a stronger, more viable  
16 provider capable of meeting ever-evolving consumer needs. At the same time, the public interest  
17 in preserving competition is not harmed as there is no reduction in actual or potential  
18 competition, given the minimal degree of CenturyLink services in Arizona. Even if competition  
19 presently existed between Qwest and CenturyLink for such markets as government or enterprise  
20 customers, there is an abundance of other providers from which customers may choose, and thus  
21 the Transaction will not lessen competition.

22       24. Ensuring the continuation of high quality service and customer experience pre-  
23 and post-merger is vitally important. Qwest and CenturyLink understand that continuing to meet  
24 customer needs is its top priority. The Transaction will not change that focus. To the contrary,  
25 the customer service, network and operations functions that are critical to each company's

26 <sup>13</sup> Pro Forma combined customer statistics as of December 31, 2009.

1 success today will continue to be key focuses when the Transaction is complete. The post-  
2 Transaction company will be staffed to ensure that continuity.

3       25. As indirect subsidiaries of CenturyLink post-Transaction QC, QCC, and QLDC  
4 will maintain and enhance their capability to provide high quality telecommunications services  
5 and to introduce advanced services. Similarly, CenturyLink's operating subsidiaries will  
6 continue to provide high quality telecommunications services post-Transaction. The increased  
7 scale, more diverse mix of offerings, and stronger product pipeline of the combined company  
8 will provide a compelling array of products and services to better serve its post-Transaction  
9 customers.

10       26. Furthermore, because this is a parent-level transaction only, with no change in the  
11 regulated entities, the Transaction will not result in the Commission losing any of its current  
12 authority over the regulated companies. To the contrary, immediately upon completion of the  
13 Transaction the Commission retains exactly the same regulatory authority over QC, QCC, QLDC  
14 and the existing CenturyLink subsidiaries that the Commission possesses immediately prior to  
15 the Transaction. Nor does the Transaction result in any change to their regulatory status and  
16 current obligations. Instead, QC, QCC, QLDC and the existing CenturyLink subsidiaries will  
17 remain subject to the same price regulation structure, service quality and performance  
18 obligations, tariffing requirements, and other applicable orders, rules and regulations as they do  
19 now. Moreover, because the Transaction results in no direct change to the operating entities, it is  
20 seamless to customers.<sup>14</sup> There is no change in services or rates as a result of the Transaction,  
21 and QC, QCC, QLDC and the existing CenturyLink subsidiaries will continue to provide service  
22 subject to the same rules, regulations and applicable tariffs or price lists as they now do.<sup>15</sup>  
23 Likewise, the terms and prices for existing wholesale services under QC's access tariffs will be

24  
25 <sup>14</sup> The names of the entities may be changed or a d/b/a adopted.

26 <sup>15</sup> Future rate changes will continue to be governed by the same rules and procedures as today.  
In every case, end-user, wholesale obligations, and regulatory requirements are subject to future  
modification by Commission decisions and applicable law.

1 unchanged and there is no impact on the terms of existing interconnection agreements or on  
2 obligations under the laws governing interconnection.

3 27. The Transaction will not alter existing relationships between QC and its  
4 bargaining unit employees. Post-merger CenturyLink will continue to honor existing collective  
5 bargaining agreements for the duration of those agreements. Any changes to bargaining  
6 employee benefits covered by a collective bargaining agreement would be subject to the terms of  
7 those agreements.

8  
9 **VI. THE COMBINED COMPANY WILL MAINTAIN FINANCIAL,  
10 MANAGERIAL AND OPERATIONAL STRENGTH**

11 **A. FINANCIAL STRENGTH OF THE COMBINED COMPANY**

12 28. One of the Transaction's key benefits is the resulting financial condition of the  
13 combined company. A financially stronger company can continue to provide high quality  
14 services in rural areas, compete against cable telephony providers, wireless carriers, VoIP  
15 offerings, and CLECs, develop more advanced broadband and IP-based services, and provide a  
16 more viable third alternative to the large business and enterprise services offered by AT&T and  
17 Verizon.

18 29. The Transaction is a simple, tax-free, stock-for-stock transaction and offers the  
19 financial strength and flexibility for the operating subsidiaries of the post-Transaction  
20 CenturyLink to continue providing outstanding service and enhanced offerings to customers,  
21 while delivering returns to shareholders. For the twelve months ended December 31, 2009, the  
22 combined company would have had pro forma revenue of nearly \$20 billion, pro forma EBITDA  
23 of approximately \$8.2 billion, and pro forma free cash flow of approximately \$3.4 billion,  
24 excluding synergies. The combined company's pro forma net leverage would have been 2.2  
25 times EBITDA for the 12 months ended December 31, 2009, including synergies on a full run-

1 rate basis and excluding integration costs. The Transaction requires no new financing or  
2 refinancing and adds no new debt.

3 30. These attributes help insure that CenturyLink will continue to have a sound  
4 capital structure and significant free cash flow generation that will provide the fiscal stability to  
5 pursue necessary strategies and to deliver industry leading products and services to customers.  
6 As subsidiaries of the combined company, this financial strength will continue to allow QC,  
7 QCC, QLDC, and the CenturyLink subsidiaries that offer service in Arizona to have the financial  
8 stability and access to capital necessary to continue to invest in networks, systems and  
9 employees and to provide reliable services in the ever-increasingly competitive  
10 telecommunications marketplace.

11 **A. MANAGERIAL AND TECHNICAL CAPABILITIES OF THE COMBINED**  
12 **COMPANY**

13 31. The combined company's senior leadership team will consist of proven leaders  
14 with extensive experience in the telecommunications industry and a successful track record of  
15 integration. To that end, Glen F. Post, III, the current CEO and President of CenturyLink, will  
16 continue to be the CEO and President of the post-merger CenturyLink. R. Stewart Ewing, Jr. the  
17 current Chief Financial Officer (CFO) of CenturyLink, will continue to be the CFO of the post-  
18 merger CenturyLink. Karen A. Puckett, the current Chief Operating Officer (COO) of  
19 CenturyLink, will continue to be COO of post-merger CenturyLink. Finally, Christopher K.  
20 Ancell, currently the Executive Vice President of Business Markets Group for QCII, will be the  
21 President of the Business Markets Group for post-merger CenturyLink. These executives among  
22 them have nearly 100 years of experience in the telecommunications industry and many years of  
23 leadership at their respective companies.

24 32. CenturyLink has demonstrated the very best in managerial and technical  
25 capability to serve rural and urban America. As mentioned, Qwest and CenturyLink understand  
26 that continuing to meet customer needs is its top priority and that focus will not change. To the

1 contrary, the customer service, network and operations functions that are critical to each  
2 company's success today will continue to be key focuses and the operations of QC will continue  
3 to be managed by employees with extensive knowledge of the local telecommunications business  
4 and with a commitment to the needs of the local community. Similar to the CenturyTel/Embarq  
5 transaction, the planned integration for this Transaction will combine the best managerial and  
6 technical talent from both companies to serve all of the combined company's market segments.  
7 Adopting the best operational practices from the merging companies will further enhance the  
8 already strong customer centric commitment of the combined company.

9 33. Moreover, CenturyLink has a demonstrated ability to acquire and successfully  
10 integrate companies, and to combine systems and practices, while continuing to provide high  
11 quality service to customers. For example, integration activities related to the Embarq  
12 transaction show the successful results of careful planning and seamless execution. Financial  
13 and other systems have been converted and integrated. A phased billing system conversion has  
14 enabled legacy-Embarq customers to convert to CenturyLink's state of the art customer service  
15 and billing system with no degradation of the customer experience. The CenturyLink brand was  
16 launched with minimal customer confusion and popular products were expanded throughout the  
17 combined footprint.

18 34. In sum, the Transaction will enhance the managerial and technical capabilities of  
19 the companies to enable them to continue to provide high quality services to rural and urban  
20 areas of Arizona.

## 21 22 VII. A.A.C. R 14-2-803(A) DISCLOSURE 23

24 35. The Applicants provide the following information specifically in fulfillment of the  
25 requirements of A.A.C. R 14-2-803(A):  
26

- 1 i. **Officers and Directors.** The names of the current officers<sup>16</sup> and directors of  
2 CenturyTel, Inc. are stated at the CenturyLink website [www.centurylink.com](http://www.centurylink.com),  
3 specifically at  
4 <http://www.centurylink.com/Pages/AboutUs/CompanyInformation/Leadership/>  
5 and  
6 <http://www.centurylink.com/Pages/AboutUs/Governance/boardOfDirectors.jsp>  
7 (each of which is incorporated by reference). A description of the board of  
8 directors of the parent corporation post-Transaction is provided in paragraph 2,  
9 above, and a listing of the senior officers of the parent corporation post  
10 Transaction is provided in paragraph 32, above.
- 11 ii. **Business Purposes for Reorganization.** The business purposes of this  
12 transaction are described in this Joint Notice and Application. A further  
13 discussion of the reasons can be found at  
14 [http://www.centurylinkqwestmerger.com/downloads/presentations/Investor%20Pr](http://www.centurylinkqwestmerger.com/downloads/presentations/Investor%20Presentation-4-22-10.pdf)  
15 [esentation-4-22-10.pdf](http://www.centurylinkqwestmerger.com/downloads/presentations/Investor%20Presentation-4-22-10.pdf), which is incorporated by reference.
- 16 iii. **Proposed Method of Financing.** As described in paragraphs 2 through 4, above,  
17 the Transaction is a stock-for-stock exchange transaction that requires no new  
18 financing or refinancing and adds no new debt. Impacts to the CenturyLink, Inc.  
19 capital structure as a result of the merger will be addressed in testimony to be  
20 filed.
- 21 iv. **Capital Structure of Operating Subsidiaries.** The current capital structure of  
22 the operating subsidiaries, which will not be adversely affected by the  
23 Transaction, will be addressed in testimony to be filed.

24  
25  
26 <sup>16</sup> The officers' address is: CenturyLink, 100 CenturyLink Drive, Monroe, LA 71203

- 1 v. **Corporation Organization Chart.** Pre-merger organization charts of the  
2 structure of the Qwest and CenturyLink corporate entities and the post-  
3 Transaction structure of the surviving corporate entities are attached as Exhibit A.
- 4 vi. **Allocation of Income Taxes.** Any changes to the income tax allocation  
5 methodology are unknown at this time. The Applicants recognize that the tax  
6 allocation methodology may be subject to review in future Commission  
7 proceedings.
- 8 vii. **Changes in Cost of Service/Cost of Capital.** The Transaction is not expected to  
9 have an adverse impact on the cost of service or the cost of capital to the  
10 operating entities, as will be further explained in testimony to be filed.
- 11 viii. **Diversification Plans of Affiliates.** CenturyLink's business operations will  
12 continue as described in its 2009 10-K available at  
13 [http://ir.centurylink.com/phoenix.zhtml?c=112635&p=irol-](http://ir.centurylink.com/phoenix.zhtml?c=112635&p=irol-sec&control_selectgroup=Annual%20Filings)  
14 [sec&control\\_selectgroup=Annual%20Filings](http://ir.centurylink.com/phoenix.zhtml?c=112635&p=irol-sec&control_selectgroup=Annual%20Filings), incorporated by reference.
- 15 ix. **Documents and Filings.** The proposed Transaction will be subject to review by  
16 the FCC, the Department of Justice, and numerous state public utility  
17 commissions. Because of the substantial number of filings to be made in  
18 connection with the Transaction, the Applicants have not attached all filings with  
19 this Application. Instead the parties will provide copies of relevant documents  
20 and filings upon request by the Commission.
- 21 x. **Investments in Affiliates.** The annual and cumulative investment by  
22 CenturyLink in each affiliate for the next five years has not been determined. As  
23 discussed above in paragraphs 29 through 31, above, the Transaction results in a  
24 financially strong entity which will provide customers with diversified and quality  
25 services.  
26



1           xi. **Access to Capital for Construction of New Plant and Improvements to**

2           **Existing Plant.** As will be explained in the testimony to be filed, CenturyLink  
3           anticipates that the post-Transaction entities will be able to continue to attract  
4           capital on terms as favorable or more favorable than would be available without  
5           the Transaction, and that adequate capital will be available for construction of  
6           necessary new utility plant and for improvements in existing utility plant.

7   In summary, the Transaction will not result in impairment of the financial status of any of the  
8   operating companies, prevent any of them from attracting capital at fair and reasonable terms, or  
9   impair their ability to provide safe, reasonable and adequate service and should be approved.

10  
11                           **VIII. REQUEST FOR EXPEDITED PROCEEDINGS**

12  
13           36.   The Applicants respectfully seek expedited approval of this Joint Application. By  
14   combining two companies with complementary network footprints and unparalleled commitment  
15   to serving local customers, including rural customers, the Transaction will create significant  
16   economies of scale and scope and give the combined firm greater financial strength and  
17   flexibility to compete and to ensure that the combined enterprise is well positioned to weather  
18   future economic downturns. Expedited treatment is requested to allow the Applicants to more  
19   quickly integrate the companies in order to bring those benefits to consumer, business, wholesale  
20   customers and shareholders sooner, which is in the public interest.

21           37.   Competitors of CenturyLink and Qwest now have the benefit of planning their  
22   competitive responses to the prospective combined company and trying to capitalize on any  
23   delay or perceived uncertainty. Expedited treatment of this Application will allow the new  
24   company to promptly engage and quickly respond to the ever-changing telecommunications  
25   marketplace.

38. As CenturyLink continues its integration of employees and business and network organizations as a result of its recent merger with Embarq Corporation, expedited approval of the Transaction with Qwest will allow both integrations to be coordinated and more efficient. And, as with any transaction of this nature, there is also a significant benefit to providing certainty and clarity to employees that can only come with completion of the Transaction.

39. Accordingly, CenturyLink and Qwest respectfully request the Commission to complete its review of this Application and issue its final Order approving the Transaction by December 31, 2010. The Joint Applicants will pre-file testimony in the near future in order to provide the Utilities Division Staff with additional information to perform its analysis of the application.<sup>17</sup>

## IX. CONCLUSION

The Transaction is a straightforward, parent-level stock-for-stock transfer of control of QCII. It does not involve complex financial or tax structures nor result in additional debt or new financing or refinancing conditions. QC, QCC, QLDC, and the existing CenturyLink subsidiaries will continue to provide services just as they do today but through a parent with even greater financial strength, a stronger customer-centric and regional operating model, and a robust, national fiber network that will enable it to reach more customers with a broader range of voice, broadband data, and other advanced communications services. None of the conditions set forth in the Affiliated Interests Rules exist that would cause the Commission to not approve the proposed Transaction. Moreover, the proposed Transaction is in the public interest. Applicants therefore respectfully request that, pursuant to the Affiliated Interests Rules and any other

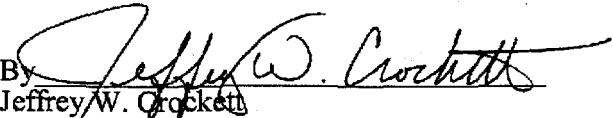
<sup>17</sup> While the Joint Applicants will be pre-filing testimony, the applicable rules do not require a hearing under the circumstances of this transaction. In the event that it is determined that a hearing is not necessary, the pre-filed testimony may be considered additional support for the Application.

1 applicable law, the Commission: i) approve the Transaction as described herein, and ii) provide  
2 any other relief or approvals as may be required by Arizona law necessary to effectuate the  
3 proposed Transaction.

4 Respectfully submitted this 13th day of May, 2010.

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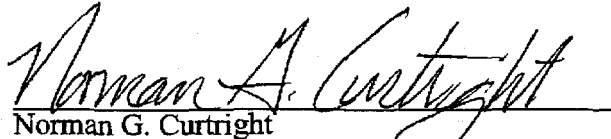
SNELL & WILMER, L.L.P.

By   
Jeffrey W. Crockett  
Bradley S. Carroll  
One Arizona Center  
400 East Van Buren  
Phoenix, Arizona 85004-2202

and

Kevin K. Zarling  
(pro hac vice application pending)  
Senior Counsel, CenturyLink  
400 W. 15<sup>th</sup> Street, Suite 315  
Austin, Texas 78701

Attorneys for Embarq Communications, Inc. d/b/a  
Century Link Communications,  
Embarq Payphone Services, Inc. d/b/a CenturyLink,  
and CenturyTel Solutions, LLC

  
Norman G. Curtright  
Associate General Counsel, Qwest  
20 E. Thomas Rd., 16<sup>th</sup> Floor  
Phoenix, Arizona 85012

Attorney for Qwest Corporation,  
Qwest Communications Company, LLC, and  
Qwest LD Corp.

1 **Original and 13 copies of the foregoing**  
2 **were filed this 13th day of May, 2010 with:**

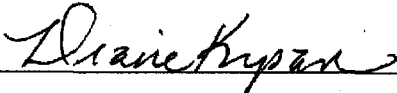
3 Docket Control  
4 Arizona Corporation Commission  
5 1200 West Washington Street  
6 Phoenix, AZ 85007

7 **COPY of the foregoing emailed**  
8 **this 13th day of May, 2010 to:**

9 Lyn Farmer  
10 Chief Administrative Law Judge  
11 Arizona Corporation Commission  
12 1200 West Washington Street  
13 Phoenix, AZ 85007

14 Janice Alward, Chief Counsel  
15 Legal Department  
16 Arizona Corporation Commission  
17 1200 West Washington Street  
18 Phoenix, AZ 85007

19 Steve Olea, Director  
20 Utilities Division  
21 Arizona Corporation Commission  
22 1200 West Washington Street  
23 Phoenix, AZ 85007

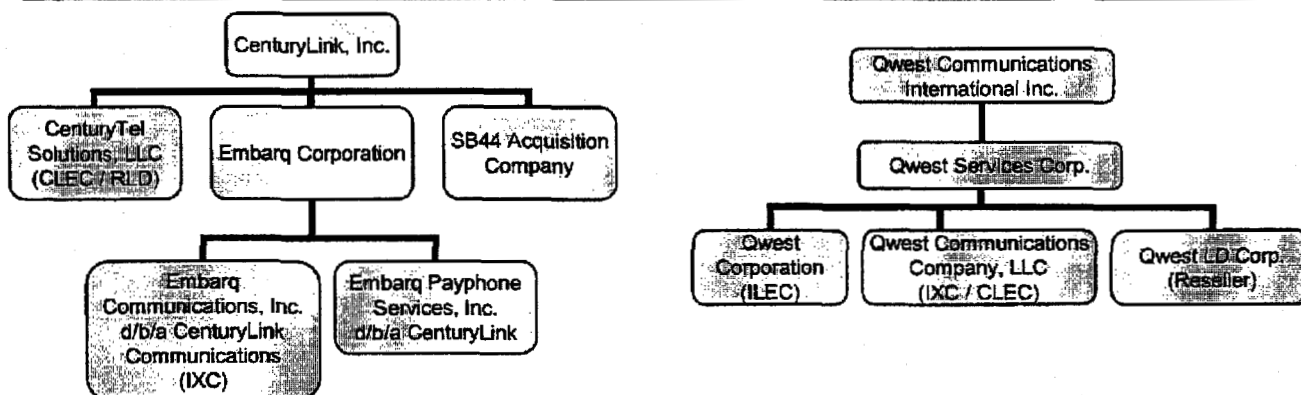
24   
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# Exhibit A

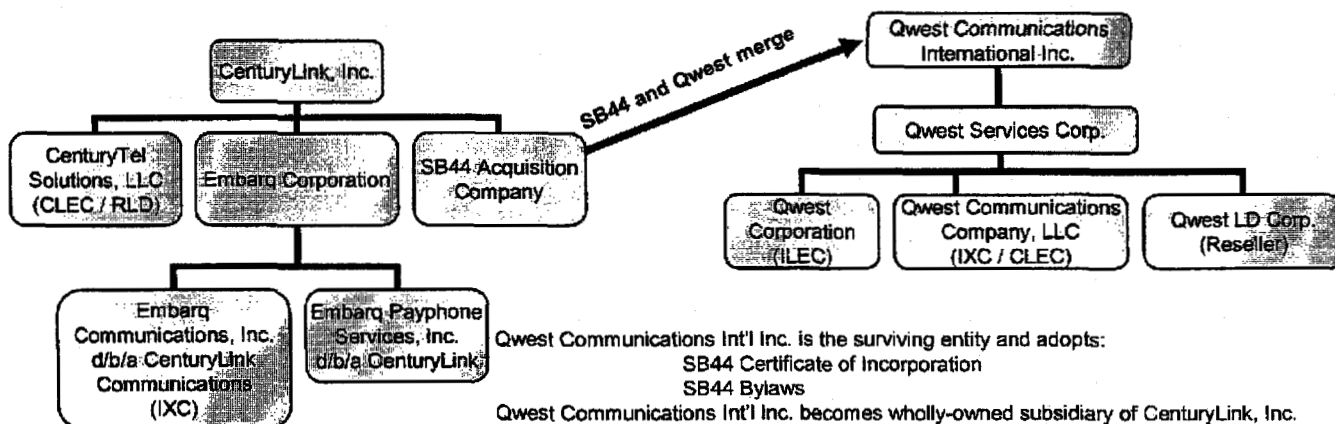
**ARIZONA**  
Organizational Structure Diagrams

**Exhibit A**  
**Joint Notice and Application**

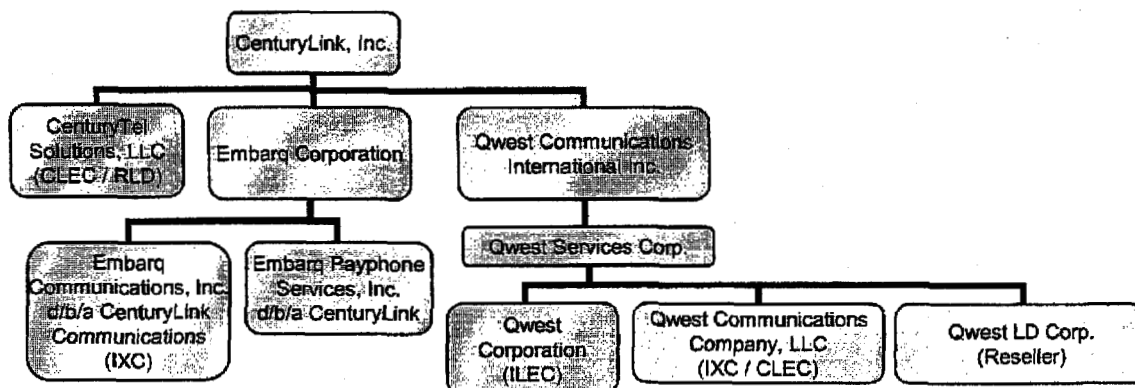
**Pre-Merger**



**Merger**



**Post-Merger**



NOTE: CenturyTel, Inc. will change its name to CenturyLink, Inc. on May 20, 2010, assuming shareholder approval.

**PROPOSED SETTLEMENT AGREEMENT ON JOINT APPLICANTS'  
APPLICATION**

**(DOCKET NOS. T-01051B-10-0194, T-02811B-10-0194, T-04190A-10-0194, T-20443A-10-0194, T-03555A-10-0194 AND T-03902A-10-0194)**

This Proposed Settlement Agreement, including Attachment 1 appended hereto which is hereby incorporated herein by reference, (the "Agreement") is entered into by and among Qwest Communications International, Inc., and its Arizona telephone operating subsidiaries Qwest Corporation, Qwest Communications Company LLC, and Qwest LD Corp., (collectively "Qwest") and CenturyLink, Inc., and its Arizona telephone operating subsidiaries including Embarq Communications, Inc., d/b/a CenturyLink Communications, Embarq Payphone Services, Inc., d/b/a CenturyLink, and CenturyTel Solutions LLC, (collectively "CenturyLink") (Qwest and CenturyLink are collectively referred to herein as the "Joint Applicants"), the Utilities Division ("Staff") of the Arizona Corporation Commission ("Commission"), and the Residential Utility Consumer Office ("RUCO") (individually a "Party" or collectively, the "Settling Parties").

**RECITALS**

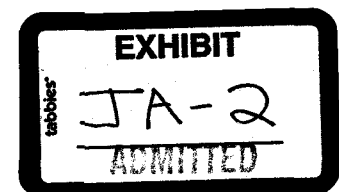
WHEREAS, On May 13, 2010, the Joint Applicants submitted for Commission approval a Joint Notice and Application for Expedited Approval of Proposed Merger (the "Joint Application");

AND WHEREAS, the Settling Parties desire to adopt this Agreement to settle all outstanding issues among themselves pertaining to the Joint Application in Docket Nos. T-01051B-10-0194, T-02811B-10-0194, T-04190A-10-0194, T-20443A-10-0194, T-03555A-10-0194 and T-03902A-10-0194 in a manner that will meet the requirements of A.A.C. R14-2-803 and promote the public interest;

AND WHEREAS, the Settling Parties agree that the negotiation process undertaken in this matter was open to all Intervenors and provided all Intervenors with an equal opportunity to participate, and that all Intervenors were notified of the settlement process and encouraged to participate;

AND WHEREAS, the Settling Parties agree that the terms of this Agreement will serve the public interest by providing a just and reasonable resolution of the issues presented by the Joint Applicants' application (the "Joint Application") in Docket Nos. T-01051B-10-0194, T-02811B-10-0194, T-04190A-10-0194, T-20443A-10-0194, T-03555A-10-0194 and T-03902A-10-0194. The adoption of this Agreement will further serve the public interest by allowing the Settling Parties to avoid the expense and delay associated with litigation;

AND WHEREAS, in consideration thereof, the Settling Parties agree as follows:



## **TERMS AND CONDITIONS**

### **1. Broadband Commitment.**

Joint Applicants shall invest no less than \$70 million in broadband infrastructure within the State of Arizona over a five year period beginning January 1, 2011. (Condition 17)

### **2. Retail and Wholesale Conditions.**

The Settling Parties agree to the conditions addressing retail operations (Conditions 10-18) and wholesale operations (Conditions 19-31) set forth in Attachment 1 of this Agreement.

### **3. Merger Cost, Regulatory, Financial, Reporting, and Conservation of Commission Resources Conditions.**

The Settling Parties agree to the conditions addressing merger costs (Conditions 1-3), regulatory (Conditions 4-9), financial (Conditions 32-33), reporting (Conditions 34-40), and conservation of Commission resources (Condition 41) set forth in Attachment 1 of this Agreement.

### **4. Effective Date.**

This Agreement is effective upon execution, however, the conditions contained in Attachment 1 of the Agreement shall not become effective unless and until the transaction closes. If the transaction does not close, this Agreement is null and void.

### **5. FCC Conditions.**

Any required terms and conditions applicable to Competitive Local Exchange Carriers ("CLECs") or Commercial Mobile Radio Service ("CMRS") providers or other matters that are contained in the FCC's order approving the merger shall be in addition to the terms and conditions of this Agreement. If any of the FCC terms and conditions are inconsistent with this Agreement, the Joint Applicants, Staff or RUCO may request that the Commission revisit the terms and conditions adopted herein to determine whether adoption of the FCC condition would be more appropriate, unless the FCC condition is state specific or such choice is not permitted by the FCC Order.

### **6. No Impairment.**

The Settling Parties agree that, with this Agreement and the agreed upon conditions and commitments contained herein and in Attachment 1 of this Agreement, the Joint Application of Qwest and CenturyLink for approval of the proposed merger will not impair the financial status of the Joint Applicants, otherwise prevent the Joint Applicants from attracting capital at fair and reasonable terms, or impair the ability of the Joint Applicants to provide safe, reasonable and adequate service, and should be approved and authorized by the Commission pursuant to A.A.C. R14-2-803.



**7. Public Interest.**

The Settling Parties agree that, with this Agreement and the agreed upon conditions and commitments contained herein and in Attachment 1 of this Agreement, the Joint Application of Qwest and CenturyLink for approval of the proposed merger is in the public interest and should be approved by the Commission. As part of meeting the public interest standard, the merger will create numerous benefits to consumers in the State of Arizona. Those benefits include:

(a) creation of a combined company that is stronger financially than either company would be standing alone. This will provide the merged company the ability to make necessary investments to its network in order to provide advanced products and services.

(b) substantial investment in broadband in the state, as particularly describe in Section 1 above.

(c) maintenance of existing retail service quality measures for a period of two (2) years;

(d) implementation of a new local market model where by operation decisions are pushed closer to the customer, increasing responsive to customers' needs, marketing flexibility, and targeted investment.

(e) neither Qwest Corporation nor any successor entity will recover through wholesale service rates or other fees paid by CLECs or through Arizona end-user retail rates the acquisition costs of the merger.

(f) extension of interconnection agreements, wholesale agreements, commercial agreements and tariffs for the benefit of CLECs and their respective customers.

(g) the Joint Applicants will evaluate existing litigation involving the Commission and make a good faith effort to resolve the issues without further litigation.

(h) the Joint Applicants have agreed to significant reporting to the Commission which will enable the Commission to better evaluate improvements in service quality, customer complaints, infrastructure, broadband coverage, and the financial status of the Joint Applicants.

**8. Resolution of All Issues.**

This Agreement resolves all Settling Parties' issues related to the Commission's approval of the Joint Application.

**9. Commission Evaluation of this Proposed Settlement.**

(a) The Settling Parties agree that all currently filed testimony and exhibits shall be stipulated into the Commission's record as evidence. Each of the Settling Parties shall file testimony in support of the Agreement.

(b) The Settling Parties recognize that Staff does not have the power to bind the Commission. For purposes of proposing a settlement agreement, Staff acts in the same manner as any party to a Commission proceeding.

(c) This Agreement shall serve as a procedural device by which the Settling Parties will submit their proposed settlement of Docket Nos. T-01051B-10-0194, T-02811B-10-0194, T-04190A-10-0194, T-20443A-10-0194, T-03555A-10-0194 and T-03902A-10-0194 to the Commission. Except for Sections 13, 14 and 16, this Agreement will not have any binding force or effect until its provisions are adopted as an order of the Commission.

(d) The Settling Parties further recognize that the Commission will independently consider and evaluate the terms of this Agreement.

**10. Approval by the Commission; Approval with Material Conditions.**

(a) If the Commission issues an order adopting all material terms of this settlement, such action shall constitute Commission approval of this Agreement. Thereafter, the Settling Parties shall abide by the terms as approved by the Commission.

(b) If the Commission is willing to approve the Joint Application, but such approval is contingent upon conditions or requirements that materially alter the Agreement ("Material Conditions"), the Settling Parties shall meet and confer as soon as reasonably practical to determine in good faith whether each Party would be willing to accept such Material Conditions. If the Material Conditions are not acceptable to one or more of the Settling Parties, then the Settling Parties, prior to the Commission approving the Settlement, shall request that the Commission send the matter back to the Hearing Division for an expedited evidentiary hearing on the Joint Application based upon the pre-filed testimony in the Docket. If the Commission approves the Settlement with terms that materially alter the Agreement and one or more of the Settling Parties are not willing to accept the terms, then the Settling Parties (with the exception of Staff) shall request a rehearing pursuant to ARS § 40-253. For the purposes of this Agreement, whether a condition or requirement constitutes a Material Condition shall be left to the discretion of each Party.

**11. Definitive Text.**

The "Definitive Text" of this Agreement shall be the text adopted by the Commission in an order that approves all material terms of the Agreement, including all modifications made by the Commission in such an order.

**12. Non-Severability Clause.**

Each of the terms of the Definitive Text of the Agreement is in consideration and support of all other terms. Accordingly, the terms are not severable.

**13. Privileged and Confidential Communications.**

All negotiations relating to this Agreement are privileged and confidential, and no Party is bound by any position asserted in negotiations, except as expressly stated in this Agreement.

As such, evidence of conduct or statements made in the course of negotiating this Agreement are not admissible as evidence before the Commission, any other regulatory agency, or any court.

**14. No Waiver or Admission.**

(a) This Agreement represents the Settling Parties' mutual desire to compromise and settle disputed issues in a manner consistent with the public interest.

(b) Nothing in this Agreement shall be construed as an admission by any of the Settling Parties that any of the positions taken by any Party in this proceeding is unreasonable or unlawful. In addition, acceptance of this Agreement by any of the Settling Parties is without prejudice to any position taken by any Party in these proceedings.

(c) This case presents a unique set of circumstances and has attracted a number of participants with diverse interests. To achieve consensus for settlement, the Settling Parties are accepting positions that, in any other circumstances, they would be unwilling to accept. They are doing so because the Agreement, as a whole, with its various provisions for settling the unique issues presented by this case, is consistent with their long-term interests and with the broad public interest.

**15. Entire Agreement.**

The Settling Parties acknowledge that this Agreement is a product of negotiations and compromise. This Agreement constitutes the Settling Parties' entire agreement on all matters set forth herein, and it supersedes any and all prior oral and written understanding or agreements on such matters.

**16. Duty to Defend and Support.**

(a) The Settling Parties will support all aspects of this Agreement in any hearing, Open Meeting, or other Commission proceeding conducted to determine whether the Commission should approve this Agreement, and/or in any other Commission hearing, proceeding, or judicial review relating to this Agreement or the implementation of its terms and conditions. Each Settling Party also agrees that, except as expressly provided in this Agreement, it will take no action in any administrative or judicial proceeding, or otherwise, which would have the effect, directly or indirectly, of contravening the provisions or purposes of this Agreement.

(b) The Settling Parties agree to cooperate to ensure compliance with, or seek waiver of, applicable Commission orders or regulations to the extent necessary to permit all provisions of this Agreement to be performed and effective.

**17. No Precedent Established.**

This Agreement is made for settlement purposes only. Neither this Agreement nor any of the positions taken in this Agreement by any of the Signatories may be referred to, cited, or relied upon as precedent in any proceeding before the Commission, any other regulatory agency,

or any court for any purpose except in furtherance of securing the approval and enforcement of this Agreement.

**18. No Waiver; Reservation of Rights.**

(a) Nothing in this Agreement shall constitute a waiver by any Party with respect to any matter not specifically addressed in this Agreement. In the event this Agreement becomes null and void or in the event the Commission does not approve this Agreement, or in the event that the merger does not close, this Agreement, as well as the negotiations or discussions undertaken in conjunction with the Agreement, shall not be admissible into evidence in these or any other proceeding.

(b) The Settling Parties expressly reserve the right to advocate positions different from those stated in this Agreement in any proceeding other than one necessary to obtain approval of, or to implement, this Agreement or its terms and conditions, but this section shall not contravene or reduce any Settling Parties' obligations set forth herein.

**19. Commission Jurisdiction.**

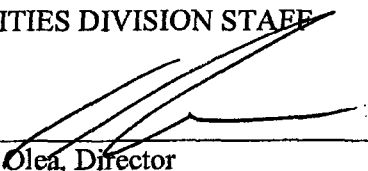
Nothing herein is intended to in any way limit or restrict the Commission's jurisdiction or authority over Qwest or CenturyLink as provided for under the Arizona Constitution, the Arizona Revised Statutes and Commission rules. Further, unless expressly and specifically waived herein, Qwest and CenturyLink shall continue to comply with all Commission rules and orders.

**20. Execution and Counterparts.**

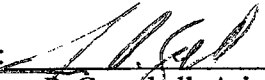
This Agreement may be signed in counterparts, each of which shall be deemed an original. This Agreement may be executed by facsimile or electronic signature and the Settling Parties agree that such execution shall have the same force and effect as delivery of an original document with original signatures, and that each Party may use such facsimile or electronic signatures as evidence of the execution and delivery of this Agreement by the Settling Parties to the same extent that an original signature could be used.

DATED this 24th day of November, 2010.

ARIZONA CORPORATION COMMISSION  
UTILITIES DIVISION STAFF

By:   
Steve Olea, Director  
Utilities Division  
1200 West Washington  
Phoenix, Arizona 85007

QWEST COMMUNICATIONS  
INTERNATIONAL, INC., and its Arizona  
telephone operating subsidiaries Qwest  
Corporation, Qwest Communications Company  
LLC, and Qwest LD Corp.

By:   
James P. Campbell, Arizona State President  
20 E. Thomas Road  
Phoenix, Arizona 85012

CENTURYLINK, INC., and its Arizona telephone  
operating subsidiaries including Embarq  
Communications, Inc., d/b/a CenturyLink  
Communications, Embarq Payphone Services, Inc.,  
d/b/a CenturyLink, and CenturyTel Solutions LLC

By: \_\_\_\_\_  
Jeff Glover  
Vice President - Regulatory Operations & Policy  
100 CenturyLink Drive  
Monroe, Louisiana 71203

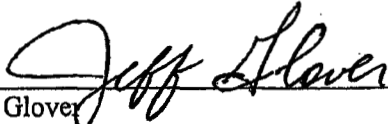
RESIDENTIAL UTILITY CONSUMER OFFICE

By: \_\_\_\_\_  
Jodi Jerich, Director  
1110 W. Washington, Suite 220  
Phoenix, Arizona 85007

QWEST COMMUNICATIONS  
INTERNATIONAL, INC., and its Arizona  
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LLC, and Qwest LD Corp.

By: \_\_\_\_\_  
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Vice President - Regulatory Operations & Policy  
100 CenturyLink Drive  
Monroe, Louisiana 71203

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Monroe, Louisiana 71203

RESIDENTIAL UTILITY CONSUMER OFFICE

By:  \_\_\_\_\_  
Jodi Jerich, Director  
1110 W. Washington, Suite 220  
Phoenix, Arizona 85007

## SETTLEMENT AGREEMENT

### ATTACHMENT 1

Subject of Condition	Agreed Condition
<b>MERGER COSTS</b>	<p>1. The Merged Company agrees that Qwest Corporation or any successor entity shall not recover, or seek to recover through wholesale service rates or other fees paid by CLECs or through Arizona end-user retail rates: a) one-time transition, branding, or any other transaction-related costs; b) any acquisition premium paid by CenturyLink for QCI; and c) any increases in overall management costs that result from the transaction, including those incurred by the operating companies. For purposes of this condition, "transaction-related costs" shall be construed to include all Merged Company costs related to or resulting from the transaction and any related transition, conversion, or migration costs and, for example, shall not be limited in time to costs incurred only through the Closing Date.</p>
	<p>2. That the Merged Company shall provide the Arizona Corporation Commission ("Commission") with access to all books of account, all documents, data, and records that pertain to the proposed merger in accordance with relevant Commission decisions, statutes and rules, including the Affiliated Interest Rules.</p>
	<p>3. That the Commission reserves the right to review, for reasonableness, all financial aspects of this transaction in any relevant proceeding. Nothing in this condition is intended to limit the Commission's authority in any way.</p>
<b>REGULATORY</b>	<p>4. In the Qwest ILEC service territory, after the merger closing, Qwest Corporation shall continue to be classified as a Bell Operating Company ("BOC"), pursuant to Section 3(4)(A)-(B) of the Communications Act and shall be subject to all requirements applicable to BOCs, including Sections 271 and 272.</p>
	<p>5. The Merged Company agrees that Qwest Corporation or any successor entity shall continue to comply with all Section 271 obligations adopted by this Commission and the FCC, including all Qwest Performance Assurance Plan ("QPAP") and Performance Indicator Definition ("PID") obligations, until it is released of those obligations by the FCC and/or this Commission, as appropriate.</p>
	<p>6. That the Merged Company shall continue to comply with all relevant prior Commission orders and decisions, unless the Commission specifically finds in an order that they are no longer applicable.</p>
	<p>7. The Merged Company agrees that Qwest Corporation or any successor</p>



## SETTLEMENT AGREEMENT

### ATTACHMENT 1

	entity shall maintain its books and records in accordance with the Uniform System of Accounts ("USOA") and to provide the Commission with financial data on a separated intrastate basis for as long as required by the Commission.
	8. That the Merged Company agrees to notify the Commission of any merger and/or reorganization that would affect the Qwest Corporation Arizona ILEC operating company and agrees to file an application pursuant to applicable statutes and A.A.C. R14-2-801 <i>et seq.</i> for Commission approval before any such merger and/or reorganization occurs.
	9. The Merged Company agrees that Qwest Corporation or any successor entity shall provide to the Commission access to its books and records and those of its subsidiaries and affiliates, in a form acceptable to the Commission, to the extent deemed necessary by the Commission to ensure the provision of service at just and reasonable rates in the future.
<b>RETAIL OPERATIONS</b>	10. That within 180 days following merger close, CenturyTel Solutions shall file for modification or cancellation of its CLEC Certificate of Convenience & Necessity granted by Commission Decision No. 63638.
	11. That the Merged Company for a period of two years following merger close shall not file to make changes to its Service Quality Tariff, unless recommended by the Staff or the Commission.
	12. The Merged Company will abide by Commission decisions, statutes and rules regarding any filing to obtain funds from the Arizona Universal Service Fund ("AUSF"). However, the Merged Company may not file to obtain funds from the AUSF until after a final order is issued by the Commission in Docket No. RT-00000H-97-0137, or three years from merger close, whichever comes first.
	13. That the Merged Company shall maintain or improve its pre-merger complaint status in the Qwest Arizona service areas.
	14. That the Merged Company shall ensure that retail support centers are sufficiently staffed with adequately trained personnel who will provide a level of service not less than and functionally equivalent to that provided in the Qwest service areas prior to the merger. Commencing within sixty days of the end of the first full quarter after the close of the merger, and then every six months thereafter for a period of three years after close of merger, the Merged Company shall provide to Staff a report showing integration plans describing the scheduling and scoping of major systems conversions that may impact Arizona customers including business

## SETTLEMENT AGREEMENT

### ATTACHMENT 1

	<p>office and trouble reporting call centers, maintenance systems that monitor central office and transport equipment, engineering systems, outside plant record systems, billing systems, and wholesale OSS.</p> <p>The information regarding condition 14 shall be submitted confidentially to the Commissioners, the Director of the Utilities Division, and the Director of RUCO, at least 90 days before any of the above changes occur and with notice of such submittal filed in Docket Control.</p>
	<p>15. That no Commission-regulated intrastate retail service currently offered by Qwest Corporation will be discontinued for a period of at least one year following the Closing Date, except as approved by the Commission.</p>
	<p>16. That the Merged Company, for a period of three years from the close of the merger, shall give at least 90 days notice of any plans to integrate portions of Qwest's retail support systems with portions of the CenturyLink and/or Embarq systems. If the integration is to be accomplished in phases, 90 days notice shall be given before each separate phase. The Merged Company shall make a filing detailing the proposed integration and the schedule in which it is to be accomplished. The Merged Company shall indicate what support system is being replaced and what support system will survive. It shall also discuss any problems that occurred with similar integrations in other jurisdictions and how such problems will be mitigated in Arizona. The Merged Company shall explain how the proposed integration, where it affects retail operations, will improve or at least maintain current Qwest retail support systems.</p> <p>The information regarding condition 16 shall be submitted confidentially to the Commissioners, the Director of the Utilities Division, and the Director of RUCO, at least 90 days before any of the above changes occur and with notice of such submittal filed in Docket Control.</p>
	<p>17. Qwest Corporation, or any successor entity, shall invest not less than \$70 million in broadband infrastructure in Arizona over a five year period beginning January 1, 2011.</p>
	<p>18. The Merged Company shall provide notice to the Director of the Utilities Division and the Commissioners of Internet Protocol Television ("IPTV") deployment plans, on a confidential basis, no less than 30 days prior to the commercial launch of IPTV in the Qwest ILEC territory.</p> <p>For a period of three years, the Merged Company will meet with Commission Staff and RUCO annually, on a confidential basis, within 60 days of the anniversary date of the merger, to review 1) broadband deployment plans in the state including deployment in the previous year</p>

## SETTLEMENT AGREEMENT

### ATTACHMENT 1

	<p>and deployment plans for the upcoming year; 2) compliance with the Broadband commitment in condition 17 including the status of wireline broadband service in unserved and underserved areas; and 3) the status of the offering of Pure Broadband and extended DSL service in the Arizona Qwest ILEC service area.</p> <p>For purposes of this condition, "unserved" means an area that has no wireline broadband service, and "underserved" means an area with wireline broadband service but only at download speeds of 1.5 Mbps or less, and "area" means one or more living units.</p>
<b>WHOLESALE OPERATIONS</b>	<p>19. In Qwest ILEC service territory, after the Closing Date, the Merged Company will use and offer to wholesale customers the legacy Qwest Operational Support Systems ("OSS") for at least two years, or until July 1, 2013, whichever is later, and thereafter provide a level of wholesale service quality that is not less than that provided by Qwest prior to the Closing Date, with functionally equivalent support, data, functionality, performance, electronic flow through, and electronic bonding. After the period noted above, the Merged Company will not replace or integrate Qwest systems without first establishing a detailed transition plan and complying with the following procedures:</p> <p>a. <u>Detailed Plan.</u> The Merged Company will provide notice to the Wireline Competition Bureau of the FCC, the Commission and CLECs that are parties to this proceeding at least 270 days before replacing or integrating Qwest OSS system(s). Upon request, the Merged Company will describe the system to be replaced or integrated, the surviving system, and steps to be taken to ensure data integrity is maintained. The Merged Company's plan will also identify planned contingency actions in the event that the Merged Company encounters any significant problems with the planned transition. The plan submitted by the Merged Company will be prepared by information technology professionals with substantial experience and knowledge regarding legacy CenturyLink and legacy Qwest systems processes and requirements. CLEC will have the opportunity to comment on the Merged Company's plan in a forum in which it is filed, if the regulatory body allows comments, as well as in the Qwest Change Management Process.</p> <p>b. <u>CMP.</u> The Merged Company will follow the procedures in the Qwest Change Management Process ("CMP") Document.<sup>1</sup></p> <p>c. <u>Replacement or Retirement of a Qwest OSS Interface.</u></p> <p>i. The replacement or retirement of a Qwest OSS Interface may not occur</p>

<sup>1</sup> The Qwest CMP Document is available at <http://www.qwest.com/wholesale/cmp/>

## SETTLEMENT AGREEMENT

### ATTACHMENT 1

	<p>without sufficient acceptance of the replacement interface by CLECs to help assure that the replacement interface provides the level of wholesale service quality provided by Qwest prior to the Closing Date. Each party participating in testing will commit adequate resources to complete the acceptance testing within the applicable time period. The Parties will work together to develop acceptance criteria. Testing will continue until the acceptance criteria are met. Sufficient acceptance of a replacement for a Qwest OSS Interface will be determined by a majority vote, no vote to be unreasonably withheld, of the CMP participants (Qwest and CLECs) in testing, subject to any party invoking the CMP's Dispute Resolution process. The requirements of this paragraph will remain in place only until completion of merger-related OSS integration and migration activity. If a dispute arises as to whether such merger-related OSS integration and migration activity is complete, the Commission will determine the completion date.</p> <p>ii. The Merged Company will allow coordinated testing with CLECs, including a stable testing environment that mirrors production, jointly established test cases, and, when applicable, controlled production testing, unless otherwise agreed to by the Parties. Testing described in this paragraph associated with merger-related system replacement or integration will be allowed for the time periods in the CMP Document, or for 120 days, whichever is longer, unless otherwise mutually agreed to by the Parties.</p> <p>iii. The Merged Company will provide the wholesale carriers training and education on any wholesale OSS implemented by the Merged Company without charge to the wholesale carrier.</p> <p>d. <u>Billing Systems</u>. The Merged Company will not begin integration of Billing systems before the end of the minimum two year or July 1, 2013 period, whichever is longer, noted above, or without following the above procedures, unless the integration will not impact data, connectivity and system functions that support or affect CLECs and their customers.</p> <p>i. Any changes by the Merged Company to the legacy Qwest non-retail OSS will meet all applicable ICA provisions related to billing and, to the extent not included in an ICA, will be Ordering and Billing Forum (OBF) compliant.</p>
	<p>20. In the Qwest ILEC service territory, the Merged Company shall comply with all wholesale performance requirements and associated remedy or penalty regimes for all wholesale services, including those set forth in regulations, tariffs, interconnection agreements, and Commercial agreements applicable to legacy Qwest as of the Merger Closing Date. In the Qwest service territory, the Merged Company shall continue to</p>

## SETTLEMENT AGREEMENT

### ATTACHMENT 1

provide to CLECs at least the reports of wholesale performance metrics that legacy Qwest made available, or was required to make available, to CLECs as of the Merger Closing Date, or as subsequently modified or eliminated as permitted under this Agreement or pursuant to any changes in law. The Merged Company shall also provide these reports to Commission Staff, or the FCC when requested. The Commission and/or the FCC may determine that additional remedies are required; to the extent the Commission or FCC finds it is consistent with its jurisdiction. The Merged Company does not waive its right to oppose such a request.

- a. The Parties will not seek to reduce or modify the Qwest Performance Indicator Definition (PID) or Qwest Performance Assurance Plan (QPAP) that is offered, or provided via contract or Commission approved plan, as of the Merger Closing Date for at least eighteen months after the Closing Date. After the eighteen month period, the Parties may seek modifications under the terms and conditions outlined in the QPAP. The Merged Company will not seek to eliminate or withdraw the QPAP for at least three years after the Closing Date. The QPAP will continue to be available to all CLECs unless the Merged Company obtains approval from the Commission to eliminate or withdraw it.
  - i. For at least three years after the Closing Date, and consistent with the FCC's required conditions of the Embarq-CenturyTel merger, in the Qwest ILEC service territory, the Merged Company shall meet or exceed the average wholesale performance provided by Qwest to CLEC, measured as follows:
    - (a.) For the first three months after Closing Date, Qwest's performance will be compared to Qwest's performance for the twelve months prior to Closing Date.
    - (b.) Thereafter, each successive month of Qwest's performance will be added to the three month period in (a.) in determining Qwest's performance until twelve months after Closing Date.
    - (c.) Beginning one year after Closing Date, Qwest's performance will be measured by a rolling twelve month average performance.
- b. If the Merged Company fails to provide wholesale performance levels as measured by the methodology described in this condition, the Merged Company must conduct a root cause analysis for the discrepancies and develop proposals to remedy each deficiency within thirty days and provide this to CLEC for review and comment.
  - i. CLEC may invoke the root cause procedure for deterioration in wholesale performance for any PID, product, or disaggregation

## SETTLEMENT AGREEMENT

### ATTACHMENT 1

	<p>included within a PID measure if CLEC determines that the performance it received for that PID, product, or disaggregation is materially different and provides the basis for CLEC's determination.</p> <p>ii. If performance deficiencies are not resolved, CLEC may request a resolution or wholesale service quality proceeding before the Commission. The Merged Company does not waive its right to oppose such a request.</p>
	<p>21. The Merged Company shall incorporate XML in place of EDI in any relevant metrics as it has already done in Colorado, Utah and Montana. Any changes to the PIDs or QPAP must be approved by the Commission.</p>
	<p>22. In the Qwest ILEC service territory, the Merged Company will maintain the Qwest Corporation Change Management Process for 36 months after the transaction closing, utilizing the terms and conditions set forth in the CMP Document. CenturyLink and Qwest Corporation do not waive their rights to modify the CMP consistent with the provisions contained in the CMP Document. Pending CLEC Change Requests shall continue to be processed in a commercially reasonable time frame consistent with the provisions contained in the CMP Document. The Merged Company will not terminate the CMP without Commission approval.</p>
	<p>23. Notwithstanding any provision allowing one or both parties to Qwest interconnection agreements, Commercial agreements, Wholesale agreements, interstate tariffs, and intrastate tariffs, and other wholesale agreements between Qwest Corporation or its successors and assigns and CLEC ("Extended Agreements") to terminate the Extended Agreement upon or after expiration of the term of the agreement, the Merged Company shall not terminate or grandparent, change the terms or conditions, or increase the rates of any Extended Agreements during the unexpired term or for at least the Applicable Time Period identified below, whichever occurs later (the "Extended Time Period"), unless required by a change of law, or CLEC requests or agrees in writing to a change and any applicable procedure to effectuate that change is followed. In the event that the Extended Agreement expressly allows termination of the agreement in other circumstances, such as default due to non-payment, this condition does not preclude termination of an Extended Agreement in those circumstances provided that the Merged Company follows both (1) the Extended Agreement's express provisions, and (2) any applicable procedures pertaining to such termination. Upon approval of the Transaction with this Agreement in the public record, the Parties will consider these terms to be part of the order of approval and thus not trigger or require the filing of an ICA amendment, unless</p>

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directed otherwise by the Commission or FCC. To the extent an amendment is requested, the Parties agree to execute and file an amendment to the ICA with the Commission within 30 days of the Closing Date, the terms of which will mirror the language in this Agreement, unless mutually agreed otherwise.

- a. Interconnection Agreements. The Applicable Time Period for Qwest's interconnection agreements (ICAs) is at least thirty-six months after the Closing Date. The Extended Time Period applies whether or not the initial or current term has expired or is in evergreen status.

i. The Merged Company shall allow CLEC to use its or its affiliate's pre-existing interconnection agreement as the basis for negotiating an initial successor replacement interconnection agreement to the extended ICA. Where the parties agree it is reasonable to do so, the parties may incorporate the amendments to the existing agreement into the body of the agreement used as the basis for such negotiations of the initial successor replacement interconnection agreement. CLEC may also use any Commission-approved ICA to which Qwest Corporation is a party in Arizona that is in its initial term or extended term as the basis for negotiating a replacement ICA.

ii. CLEC may opt-in to an interconnection agreement in its initial term or the extended term.

iii. If Qwest and CLEC are in negotiations for a replacement interconnection agreement before the Closing Date, the Merged Company will allow CLEC to continue to use the negotiations draft upon which negotiations prior to the Closing Date have been conducted as the basis for negotiating a replacement interconnection agreement. In the latter situation (ongoing negotiations), after the Closing Date, the Merged Company will not substitute a negotiations template interconnection agreement proposal of any legacy CenturyLink operating company for the negotiations proposals made before the Closing Date by legacy Qwest.

- b. Commercial Agreements. The Applicable Time Period for Commercial agreements is at least eighteen months after the Closing Date for Qwest's Commercial agreements (*i.e.*, offerings made available after a UNE(s) becomes unavailable via ICA): Broadband for Resale, Commercial Broadband Services (QCBS), Commercial Dark Fiber, High Speed Commercial Internet Service (HSIS), Local Services Platform (QLSP), Internetwork Calling Name (ICNAM), and Commercial Line Sharing, as well as any other Commercial agreement

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to which Qwest and CLEC were parties as of the Closing Date. Notwithstanding any provision to the contrary in this Agreement:

- i. After the eighteen month period, Qwest reserves the right to modify rates.
  - ii. If a Commercial agreement later becomes unavailable on a going forward basis, the agreement will remain available to CLEC on a grandparented basis to serve CLEC's embedded base of customers already being served via services purchased under that Commercial agreement, subject to Qwest's right to modify rates, for at least eighteen months after Qwest has notified CLEC that the agreement is no longer available.
- c. Wholesale Agreements. The Applicable Time Period for Wholesale agreements is at least eighteen months after the Closing Date for Qwest's Wholesale agreements (*i.e.*, offerings made available after a tariffed offering becomes unavailable via tariff): Wholesale Data Services Agreement (ATM, Frame Relay, GeoMax, HDTV-Net, Metro Optical Ethernet, Self-Healing Network, Synchronous Service Transport), as well as any other Wholesale agreement to which Qwest and CLEC were parties as of the Closing Date. Notwithstanding any provisions to the contrary in this Agreement:
- i. After the eighteen month period, Qwest reserves the right to modify rates.
  - ii. If a Wholesale agreement later becomes unavailable on a going forward basis, the agreement will remain available to CLEC on a grandparented basis to serve CLEC's embedded base of customers already being served via services purchased under that Wholesale agreement for at least eighteen months after Qwest has notified CLEC that the agreement is no longer available, subject to Qwest's right to modify rates.
- d. Tariffs. The Applicable Time Period is at least twelve months after the Closing Date for Qwest wholesale tariff offerings that CLEC ordered from Qwest via tariff as of the Closing Date. Notwithstanding any provision to the contrary in this Agreement, Qwest may engage in Competitive Response pricing as set forth in its tariffs.
- i. Regarding term and volume discount plans, such plans offered by Qwest as of the Closing Date will be extended by twelve months beyond the expiration of the then existing term, unless CLEC indicates it opts out of this one-year extension.



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	ii. The Merged Company will honor any existing contracts for services on an individualized term pricing plan arrangement for the duration of the contracted term.
	24. The Merged Company shall ensure that Wholesale and CLEC operations are sufficiently staffed and supported, relative to wholesale order volumes, by personnel, including IT personnel, adequately trained on the Qwest and CenturyLink systems and processes. With respect to the Wholesale and CLEC operations, such personnel shall be dedicated exclusively to wholesale operations so as to provide a level of service that is not less than and is functionally equivalent to that which was provided by Qwest prior to the Merger Closing Date and to ensure that CLEC protected information is not used by the Merged Company's retail operations or marketing purposes. The Merged Company will employ people who are dedicated to the task of meeting the needs of CLECs and other wholesale customers.
	25. The Merged Company shall provide to wholesale carriers, and maintain and make available to wholesale carriers on a going-forward basis, up-to-date escalation information, contact lists, and account manager information and will provide this information, when possible, thirty days prior to the Closing Date. If not possible, the Merged Company will provide the information within five business days, absent exigent circumstances. For changes to support center location, the Merged Company will provide at least thirty days advance written notice to wholesale carriers. For other changes, the Merged Company will provide reasonable notice, as circumstances permit, of the changes and will keep pertinent information timely updated. The information and notice provided shall be consistent with the terms of applicable interconnection agreements. In addition, the Merged Company will provide the information required by this paragraph to the Commission and/or Staff upon request.
	26. The Merged Company will make available to each wholesale carrier in the Qwest ILEC service territory the types and level of data, information, and assistance that Qwest made available as of the Closing Date concerning Qwest's wholesale Operational Support Systems functions and wholesale business practices and procedures, including information provided via the wholesale web site (which Qwest sometimes refers to as its Product Catalog or "PCAT"), notices, industry letters, the change management process, and databases/tools (loop qualification tools, loop make-up tool, raw loop data tool, ICONN database, <i>etc.</i> ).
	27. <u>Rates Generally.</u> The Merged Company agrees not to increase the rates in Qwest interconnection agreements during the Extended Time Period.

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	<p>If, during the Extended Time Period, the Merged Company offers a Section 251 product or service that is not offered under an interconnection agreement (a "new" product or service), the Merged Company may establish a rate using normal procedures. A product, service, or functionality is not "new" for purposes of this paragraph if Qwest was already providing that product, service, or functionality at existing rates as of the Closing Date in the Qwest ILEC serving territory.</p> <p>a. Regarding rates changed via a Commission cost docket, the Merged Company may initiate a cost docket (or seek rate increases in a cost docket initiated by another party) before the expiration of the thirty-six month period for extension of ICA terms only if (i) the rate elements, charges or functionalities are not already provided under rates as of the Closing Date; or (ii) the cost docket is not initiated until at least eighteen months after the Closing Date and any rates approved in the cost docket will not become effective until after expiration of the thirty-six month period for extension of ICA terms.</p> <p>b. After the Closing Date, in the Qwest ILEC serving territory, the Merged Company shall not assess any fees, charges, surcharges or other assessments upon CLECs for activities that arise during the subscriber acquisition and migration process other than any fees, charges, surcharges or other assessments that were approved by the Commission and charged by Qwest in the Qwest ILEC service territory before the Closing Date, unless Qwest first receives Commission approval. This condition prohibits the Merged Company from charging such fees, charges, surcharges or other assessments, including:</p> <p>i. Service order charges assessed upon CLECs submitting local service requests ("LSRs") for number porting;</p> <p>ii. Access or "use" fees or charges assessed upon CLECs that connect a competitor's own self-provisioned loop, or last mile facility, to the customer side of the Merged Company's network interface device ("NID") enclosure or box; and</p> <p>iii. "Storage" or other related fees, rents or service order charges assessed upon a CLECs' subscriber directory listings information submitted to the Merged Company for publication in a directory listing or inclusion in a directory assistance database.</p>
	<p>28. In the Qwest ILEC service territory, to the extent that an interconnection agreement is silent as to an interval for the provision of a product, service or functionality or refers to Qwest's website or Service Interval Guide ("SIG"), the applicable interval, after the Closing Date, shall be no longer</p>

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	than the interval in Qwest's SIG as of the Closing Date, for a period of three years.
	29. In the Qwest Arizona ILEC service territory, the Merged Company will not seek to avoid any of its obligations on the grounds that Qwest Corporation is exempt from any of the obligations pursuant to Section 251(f)(1) or Section 251(f)(2) of the Communications Act.
	30. Qwest will not seek to reclassify as "non-impaired" any Qwest Arizona wire centers for purposes of Section 251 of the Communications Act, nor will the Merged Company file any new petition under Section 10 of the Communications Act seeking forbearance from any Section 251 or 271 obligation or dominant carrier regulation in any Qwest Arizona wire center before June 1, 2012.
	<p>31. After the Closing Date, the Merged Company agrees that Qwest Corporation or any successor entity will engineer and maintain its Arizona network in compliance with federal and state law, as well as the terms of applicable interconnection agreements.</p> <p>a. Qwest Corporation or any successor entity shall not engineer the transmission capabilities of its network in a manner, or engage in any policy, practice, or procedure, that disrupts or degrades access to the local loop, as provided by 47 C.F.R. § 51.319(a)(8).</p> <p>b. Qwest Corporation or any successor entity will retire copper in compliance with federal and state law, as well as the terms of applicable interconnection agreements and as required by a change of law.</p>
<b>FINANCIAL</b>	32. That the Merged Company be required to report to the Commission and RUCO any of the following events for a period of three years after the close of the merger: 1) default on any loan by CenturyLink, Inc. or any of its Arizona subsidiaries; 2) a delisting of CenturyLink from trading on a major trading exchange; 3) CenturyLink, Inc.'s equity-to-total capital ratio falls below 40% and 4) CenturyLink, Inc. or any of its Arizona ILEC subsidiaries is rated with a non-investment rate grading by any of the three rating agencies including Fitch Ratings, Standard and Poor's and Moody's Investor Services or their successors. CenturyLink shall make its filing with the Commission no later than 30 days subsequent to filing its quarterly report on Form 10-Q or its annual report on Form 10-K with the Securities and Exchange Commission following the event. For the above three-year period, the Merged Company will also provide to Staff its 10Q, 10K, and 8K SEC reports and all publicly available reports issued by any of the three ratings agencies. For the purposes of this condition CenturyLink's equity ratio will be calculated using the total

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	market value of the CenturyLink Inc.'s common stock divided by its total enterprise value.
	33. CenturyLink will not seek to recover any acquisition adjustment paid for Qwest.
<b>REPORTING</b>	<p>34. Within 60 days of the nearest calendar quarter after the annual anniversary date marking the close of the merger, and for two subsequent 12-month reporting periods, CenturyLink shall provide a report describing:</p> <ul style="list-style-type: none"><li>a. Substantive activities undertaken relating to integrating Qwest operations with CenturyLink, as well as achieving synergies made available as a result of this transaction. CenturyLink synergies will be reported on a CenturyLink total company basis;</li><li>b. Costs and projected savings of each such respective activity on a CenturyLink total company and Arizona-allocated basis;</li><li>c. Organizational and staff force changes in Arizona operations;</li><li>d. Detail any cost savings that have resulted from the merger and have been passed on to consumers. The company can file its Arizona CAPEX and operating expenses to satisfy this condition;</li><li>e. Improvement in the Merged Company's complaint level in Arizona;</li><li>f. New services, including bundles available to customers;</li><li>g. Improvement in service quality measures;</li><li>h. Infrastructure improvements;</li><li>i. Expanded broadband coverage; and</li><li>j. Any other impacts on Arizona operations and customers.</li></ul> <p>Information regarding condition 34 that is confidential in nature shall be submitted to the Commissioners, the Director of the Utilities Division, and the Director of RUCO with notice of such submittal filed with Docket Control. The information that is not confidential will be filed with Docket Control.</p>
	35. That if following merger close the Merged Company chooses to conduct layoffs or facility closings in Arizona that are attributable to the merger, it shall submit a report at least 30 days prior to the effective date of the layoffs or closings stating why it is necessary to do so and what efforts the Company is making to re-deploy those individuals elsewhere in the Company. This report shall also state whether any savings associated with facility closings have been re-invested in the Company's Arizona operations, and if not, why. Consistent with condition 34, the company can file its Arizona CAPEX and operating expenses demonstrating that it

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	<p>is re-investing in the state. This report shall be filed for one year following merger close or until CenturyLink informs the Commission by filing an affidavit with Docket Control that merger related activities are completed, whichever comes last.</p> <p>The information regarding condition 35 shall be submitted to the Commissioners, the Director of the Utilities Division, and the Director of RUCO, and may be done on a confidential basis.</p>
	36. Qwest Corporation or any successor entity shall file complete annual reports, including all information required, in the form prescribed by the Commission.
	37. That the Merged Company shall notify the Commission within ten (10) business days of any substantive material changes to the transaction terms and conditions from those set forth in their Application that occur while the transaction is pending before the Commission.
	38. That the Merged Company shall provide notice of merger closure to the Commission within 45 days following the completion of the proposed merger in this transaction.
	39. That for three years following merger close an Executive Vice President, Chief Financial Officer of the Merged Company or appropriate Vice President or Officer shall certify to the Commission annually for three years that all Arizona CenturyLink entities are in compliance with all conditions contained in the Commission's decision in this matter.
	<p>40. Qwest Corporation shall provide within 60 days of merger close the Operating Expense per 1,000 Working Access Lines, Annual Investment per 1,000 Working Access Lines, and Employees per 1,000 Working Access Lines by statewide average for the years 2008, 2009 and 2010.</p> <p>Information regarding condition 40 that is confidential in nature shall be submitted to the Director of the Utilities Division with notice of such submittal filed with Docket Control. The information that is not confidential will be filed with Docket Control.</p>
<b>CONSERVATION OF COMMISSION RESOURCES</b>	41. That the Merged Company shall evaluate existing litigation involving the Commission and make a good faith effort to resolve the issues without further litigation. Following are cases which have entailed significant Commission resources which the Merged Company should include in its evaluation: (a) McLeodUSA v. ACC, Arizona District Court Case No. CV07-2145-PHX-HRH; (b) Qwest v. ACC, Arizona District Court Case No. CVO8-2374-PHX-JAT; (c) Pac-West I Level 3 VNXX Remand

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	Proceeding ACC (Docket Nos. T-0105 1B-05-0495, T-03693A-05-0495, T-0105 1B-05-0415, T-036564A-05-0415).
<b>DEFINITIONS</b>	<p>The following definitions shall apply in this Attachment 1:</p> <p>"Commission" refers to the Arizona Corporation Commission.</p> <p>"Closing Date" or "Merger Closing Date" refers to the closing date of the transaction for which the joint applicants have sought approval from the FCC and the state commissions.<sup>2</sup></p> <p>"FCC" refers to the Federal Communications Commission.</p> <p>"Merged Company" refers to CenturyLink, Inc. d/b/a CenturyLink, and Qwest Corporation.</p> <p>"Operational Support Systems" or "OSS" are defined by 47 CFR 51.319(g) and as interpreted in the rules and orders of the FCC.</p> <p>"OSS Interfaces" are defined as existing or new gateways (including application-to-application interfaces and Graphical User Interfaces), connectivity and system functions that support or affect the pre-order, order, provisioning, maintenance and repair, and billing capabilities for local services (local exchange services) provided by CLECs to their end users.</p> <p>"Qwest Corporation" and "Qwest" refers to Qwest Corporation and its successors and assigns.</p>

<sup>2</sup> See Applications Filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer Control, Pleading Cycle Established, Public Notice, DA 10-993, WC Dkt. No. 10-110 (rel. May 28, 2010) ("Public Notice") and related applications filed in state proceedings.

BEFORE THE ARIZONA CORPORATION COMMISSION

KRISTIN K. MAYES

Chair

GARY PIERCE

Commissioner

PAUL NEWMAN

Commissioner

SANDRA D. KENNEDY

Commissioner

BOB STUMP

Commissioner



JOINT NOTICE AND APPLICATION OF	)	DOCKET NOS.	T-01051B-10-0194
QWEST CORPORATION, QWEST	)		T-02811B-10-0194
COMMUNICATIONS COMPANY, LLC, QWEST	)		T-04190A-10-0194
LD CORP., EMBARQ COMMUNICATIONS,	)		T-20443A-10-0194
INC. D/B/A CENTURYLINK	)		T-03555A-10-0194
COMMUNICATIONS, EMBARQ PAYPHONE	)		T-03902A-10-0194
SERVICES, INC. D/B/A CENTURYLINK, AND	)		
CENTURYTEL SOLUTIONS, LLC FOR	)		
APPROVAL OF THE PROPOSED MERGER OF	)		
THEIR PARENT CORPORATIONS QWEST	)		
COMMUNICATIONS INTERNATIONAL INC.	)		
AND CENTURYTEL, INC.	)		

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DIRECT TESTIMONY

OF

RICHARD E. THAYER

ON BEHALF OF

LEVEL 3 COMMUNICATIONS, LLC

September 27, 2010

1   **Q.     PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2   **A.**     My name is Richard E. Thayer. I am employed by Level 3 Communications, LLC  
3           ("Level 3"). My business address is 1025 Eldorado Boulevard, Broomfield, CO  
4           80021.

5  
6   **Q.     PLEASE DESCRIBE YOUR RESPONSIBILITIES AT LEVEL 3.**

7   **A.**     I am Senior Corporate Counsel at Level 3. In that role I am primarily responsible  
8           for negotiating and finalizing interconnection agreements between Level 3 and  
9           other carriers in the U.S. Additionally, I am responsible for dispute resolution  
10          between Level 3 and other carriers when the subject matter of those disputes lies  
11          within the areas of interconnection agreements or the regulations regarding the  
12          exchange of traffic.

13

14   **Q.     PLEASE DESCRIBE YOUR PROFESSIONAL BACKGROUND.**

15   **A.**     From 1989 until 2002, I worked as an attorney for AT&T. My responsibilities  
16          included acting as: managing counsel for an AT&T subsidiary company,  
17          American Transtech; General Attorney responsible for all commercial affairs for  
18          AT&T in the Pacific Northwest (including interconnection agreements); and Vice  
19          President responsible for AT&T's wireless regulatory activities in the Pacific  
20          Northwest and AT&T Broadband, formerly TCI. I joined Level 3 in 2003 in my  
21          present position. A more comprehensive CV describing my qualifications is  
22          attached hereto as Exhibit A.

23

24   **Q.     PLEASE PROVIDE LEVEL 3's POSITION ON THE PROPOSED MERGER OF**  
25   **QWEST WITH CENTURYLINK.**



1    **A.**    Level 3 believes that with the adoption of targeted, common sense conditions,  
2           the Commission can approve the proposed transaction between "Qwest," "Qwest  
3           Operating Companies," "CenturyLink," and the "CenturyLink Operating  
4           Companies," as those terms are defined in the joint applicants' application for  
5           approval.<sup>1</sup> For ease of reference, when speaking about the transaction, I will refer  
6           to it as the "Proposed Transaction," to the involved companies as the  
7           "Applicants," and to the post transaction company as the "Combined Entity."

8

9    **Q.    WHY DOES THIS TRANSACTION RAISE CONCERNS FOR LEVEL 3?**

10   **A.**    This merger is one of first impression because the entire operation of a Regional  
11           Bell Operating Company ("RBOC") will be taken over by an Independent  
12           Incumbent Local Exchange Carrier ("ILEC") that serves predominately rural  
13           territories. If the Proposed Transaction is completed, the resulting entity will  
14           combine businesses and management that have been forced to open their  
15           markets to local competition with those that, for the most part, have not. For the  
16           Combined Entity's management, primarily from CenturyLink, its introduction to  
17           the ways of competition may run counter to past obligations or experiences of  
18           managing a rural ILEC. To ensure that the Combined Entity understands and  
19           meets its obligations, the Commission will need to adopt common sense  
20           conditions before it approves the transaction. Level 3 also believes that the  
21           Commission must be vigilant to ensure that the Combined Entity does not meet  
22           the same fate as Hawaii Telephone or Fairpoint.

23

24   **Q.    WHAT CONDITIONS DOES LEVEL 3 BELIEVE ARE NECESSARY BEFORE**  
25   **THE COMMISSION CAN APPROVE THE PROPOSED TRANSACTION?**

---

<sup>1</sup> *Application For Approval of Merger Between CenturyTel, Inc. and Qwest Communications International, Inc. Docket UM 1484 (May 24, 2010) ("Application").*

- 1     **A.**     Level 3 believes the Commission should:
- 2             1. Promote stable and predictable interconnection rights by:
- 3                 a.     Extending the term of existing interconnection agreements as set
- 4                 forth in the Joint CLEC testimony;
- 5                 b.     Requiring the Combined Entity to allow the portability from one
- 6                 state to another of the existing interconnection agreements between the
- 7                 Applicants and that CLEC; and
- 8                 c.     Requiring Qwest to extend its existing Statements of Generally
- 9                 Available Terms ("SGAT") for a period of five years.
- 10            2. Provide explicit guidance that, in light of the decision by the United States
- 11            Court of Appeals for the District of Columbia upholding the order of the Federal
- 12            Communications Commission ("FCC") in the Core Communications Mandamus
- 13            case,<sup>2</sup> all ISP-bound traffic is now subject to the rate set by the FCC, including
- 14            what has been labeled in the past as "virtual NXX" traffic. Specifically, the
- 15            Commission should impose the following conditions:
- 16                 a.     The Combined Entity shall compensate terminating carriers at the
- 17                 appropriate rate for ISP-bound traffic and that ISP-bound traffic shall
- 18                 include traffic provisioned using virtual NXX codes; and
- 19                 b.     The Combined Entity shall treat all locally-dialed ISP-bound traffic
- 20                 including virtual NXX traffic, as telecommunications traffic in the
- 21                 calculation of relative use factors for purposes of 51 C.F.R. § 703(b).
- 22            3. Take steps to prevent the Combined Entity from arbitraging the Rural
- 23            CLEC exemption to circumvent the CLEC access rate cap;

---

<sup>2</sup> *Core Communications, Inc. v. FCC*, 592 F.3d 139 (D.C. Cir. 2010) ("*D.C. Circuit Decision*").

1       4.     Require all contracts between the affiliates of the Combined Entity for  
2       telecommunications services and network interconnection to be made publicly  
3       available;

4       5.     Prohibit the Combined Entity from using billing disputes with one entity to  
5       threaten disconnection of services or refuse to provision new orders across the  
6       Combined Entity;

7       6.     Prohibit the Combined Entity from continuing or expanding improper 8YY  
8       homing switched access arbitrage practices. All telecommunications carrier  
9       entities of the Combined Entity will assess tandem transport switched access  
10      charges based on call routing to the nearest tandem according to the currently  
11      published LERG, even when such a tandem is a non-Embarq tandem;

12      7.     Require Qwest to cease its practice of denying dispute claims purely on  
13      the basis that they are older than 90 days from the date originally billed; and

14      8.     Require Qwest to cease its practice of using its interstate tariffs as a  
15      claimed basis for establishing billing analogs for intrastate charges that are not  
16      tariffed in its intrastate tariffs.

17

18   **Q.     ARE THESE THE ONLY CONDITIONS THAT LEVEL 3 BELIEVES THE**  
19   **COMMISSION SHOULD CONSIDER?**

20   **A.**    No. Level 3 supports the conditions proposed by the Joint CLECs, and is one of  
21   the sponsors of the testimony offered by Messrs. Gates and Ankum in support of  
22   those conditions. My testimony is intended as a complement to testimony  
23   offered by the Joint CLECs, but with a particular focus on problems Level 3 has  
24   experienced first hand or is particularly concerned could result from this  
25   transaction if left unaddressed.

26

1 **Q. PLEASE EXPLAIN LEVEL 3's POSITION ON INTERCONNECTION**  
2 **AGREEMENTS.**

3 Interconnection agreements are the lifeblood of a competitive  
4 telecommunications infrastructure. Without them, a carrier cannot exchange  
5 traffic or provide services within a specific area. Because of their importance,  
6 companies invest substantial time and effort in those agreements before they  
7 invest funds in their networks. It is crucial that the Commission ensure that the  
8 interconnection process continues as smoothly as possible while the Combined  
9 Entity goes about integrating its systems and streamlining its operations. It can  
10 do so by adopting three common sense conditions related to interconnection.  
11 They are:

12 1. The Combined Entity shall allow competitive providers to extend existing  
13 interconnection agreements as described in the testimony of Mr. Gates and as  
14 stated in the Joint CLEC combined Conditions List.

15 2. The Combined Entity shall allow competitive providers to import any  
16 interconnection agreement between the CLEC and the Applicants, including all of  
17 their ILEC affiliates, into the operating territory of another affiliate. For example,  
18 Level 3 should be able to import the Embarq-Level 3 interconnection agreement  
19 into the Qwest region.

20 3. Qwest shall agree to keep its existing SGAT available, without changes,  
21 for five years.

22  
23 **Q. WHY SHOULD THE COMMISSION REQUIRE AN EXTENSION OF THE**  
24 **INTERCONNECTION AGREEMENTS?**

25 **A.** To ensure that the Combined Entity can focus on integrating its operations and  
26 meeting its wholesale commitments, the Commission should require the

1 Combined Entity to allow competitive providers to elect to extend the existing  
2 interconnection agreement between the parties for a period of three years from  
3 the closing date of the transaction. This requirement must expressly include all  
4 agreements in "evergreen" status.

5 The competitive industry is concerned that the Combined Entity will  
6 decide to terminate those agreements and force carriers into renegotiations that  
7 will eventually result in the CLECs filing for arbitration. The CLECs and the  
8 Combined Entity have limited resources to devote to any project. Level 3 would  
9 prefer that the parties devote those resources, personnel and financial, toward  
10 ensuring the wholesale commitments are met.

11

12 **Q. WOULD A CONDITION EXTENDING THE INTERCONNECTION**  
13 **AGREEMENTS BE UNIQUE TO THIS TRANSACTION?**

14 **A.** No, it would not. Similar conditions have been adopted in orders approving the  
15 mergers of AT&T and Bell South; SBC and Ameritech; Fairpoint and its purchase  
16 of the Verizon territories in New Hampshire, Vermont and Maine; and the Frontier  
17 acquisition of certain Verizon territories.

18

19 **Q. PLEASE DISCUSS LEVEL 3's PROPOSAL TO REQUIRE PORTABILITY OF**  
20 **INTERCONNECTION AGREEMENTS.**

21 **A.** Level 3 believes that the Commission should require the Combined Entity to  
22 allow a competitive carrier to import into Arizona any interconnection agreement  
23 that it maintains in another state. So, for example, Level 3 would have the option  
24 of extending an interconnection agreement it already has in Arizona or it could  
25 notify the Combined Entity that it wants to use the Nevada interconnection  
26 agreement between Level 3 and Embarq in Arizona. Only mandatory state-

1 specific pricing changes would be required and those changes should be  
2 automatic. The Combined Entity should not be allowed to delay implementation  
3 of an imported agreement by claiming that negotiations are required to make the  
4 agreement state specific.

5  
6 **Q. WOULD A PORTABILITY REQUIREMENT FOR INTERCONNECTION**  
7 **AGREEMENTS BE UNIQUE TO THIS TRANSACTION?**

8 **A.** No, it would not. A similar condition was imposed by the FCC in the  
9 *AT&T/BellSouth Order*. In doing so, the FCC found that such conditions "should  
10 reduce any incremental effect on the pending merger on the incentive to  
11 discriminate."<sup>3</sup>

12  
13 **Q. PLEASE EXPLAIN LEVEL 3's CONCERNS REGARDING THE QWEST SGAT.**

14 **A.** Since the Combined Entity will be focused on integrating its operations and  
15 meeting its wholesale commitments, it is important that competitors limit friction  
16 caused by expiring interconnection agreements. That's why Level 3 believes it is  
17 important to extend the existing agreements and allow for the importation of other  
18 interconnection agreements the Combined Entity maintains. There is a third step,  
19 however, that Level 3 believes the Commission should take to allow competitors  
20 flexibility, and that is, requiring Qwest to agree to keep its SGAT available for five  
21 years. By doing so, the Commission will ensure that competitive providers have  
22 sufficient options to establish interconnection arrangements with the Combined  
23 Entity. Everyone will then be focused on integration, implementation and  
24 exchanging traffic instead of arbitrating new interconnection agreements. Five  
25 years is the appropriate time period for offering the SGAT because it provides a

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<sup>3</sup> *Memorandum Opinion and Order*, In the Matter of AT&T Inc. and BellSouth Corporation  
Application for Transfer of Control, WC Docket No. 06-74, released March 26, 2007.

1 consistent approach to interconnection for competitors to rely upon. When it  
2 comes to interconnection, the public interest requires certainty so that  
3 appropriate investments can be made in the respective networks. With the  
4 adoption of this simple, common sense solution, Level 3 believes the  
5 Commission can promote a competitive playing field in the marketplace.  
6

7 **Q. IF THE COMMISSION PROVIDES AN OPTION TO EXTEND THE**  
8 **INTERCONNECTION AGREEMENTS OR TO IMPORT AN AGREEMENT**  
9 **FROM ANOTHER STATE, DOES THAT RESOLVE ANY DISPUTES OR**  
10 **ISSUES SURROUNDING THE COMBINED ENTITY'S WHOLESALE**  
11 **OBLIGATIONS?**

12 **A.** While those two steps would go a long way in ensuring that the parties focus on  
13 operating their businesses and providing services to end-users, the Commission  
14 must resolve the outstanding issues with respect to contract interpretation. It  
15 won't do much good to extend an agreement when the parties have serious  
16 policy disagreements over the interpretation for implementation of the  
17 agreements. It's in everyone's best interests to resolve interconnection issues.  
18

19 **Q. WHAT ISSUES SHOULD THE COMMISSION RESOLVE?**

20 **A.** One important issue the Commission should resolve involves intercarrier  
21 compensation for ISP-bound traffic. Any condition regarding agreements will be  
22 hollow unless this question is explicitly addressed. Without clear guidance,  
23 regulatory and judicial litigation involving the interpretation of interconnection  
24 agreements will drag on and agreements ported into a state will spur new  
25 conflicts.

1           The most litigated issue that Level 3 has experienced in the Qwest  
2           service territory for the past 10 years has been the treatment of locally dialed  
3           ISP-bound traffic. Qwest has taken every opportunity to oppose its obligation to  
4           pay terminating compensation for that traffic, arguing that the ISP must be  
5           physically located in the same local calling area as the Qwest end user making  
6           the call. The dockets of the state commissions as well as state and federal courts  
7           are full of proceedings interpreting and reinterpreting the *ISP Remand Order*.  
8           With each conflicting interpretation, the unsuccessful party pushes the matter  
9           further up the appellate ladder.

10

11   **Q.   WHY SHOULD THE COMMISSION RESOLVE THE TREATMENT OF ISP-**  
12   **BOUND TRAFFIC HERE?**

13   **A.**   Resolution of the applicable interconnection obligation concerning ISP-bound  
14           traffic is necessary to ensure that the Combined Entity does not force its  
15           competitors to litigate issues that have been finally resolved by the United States  
16           Court of Appeals for the District of Columbia Circuit in its review of the *Core ISP*  
17           *Order*.<sup>4</sup> As incumbents, CenturyLink, Qwest and Embarq have every incentive to  
18           dispute the application of the intercarrier compensation regime for ISP-bound  
19           traffic by pressing invalidated arguments to avoid paying their competitors for  
20           traffic that their end users originate. In the context of this merger, however, the  
21           question isn't just whether the Combined Entity will thwart competition, but it also  
22           goes to the basic economic assumptions the Applicants have made when

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<sup>4</sup>*In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Developing Unified Intercarrier Compensation Regime, Intercarrier Compensation for ISP-bound traffic*, CC Docket Nos. 96-98, 99-68, 01-92, et al., Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, FCC 08-262, 24 FCC Rcd. 6475, 2008 WL 4821547 (rel. Nov. 5, 2008) ("Core ISP Order"); *D.C. Circuit Decision*.



1 examining this transaction and whether the Applicants will force competitors to  
2 subsidize the operations of the Combined Entity.

3  
4 **Q. PLEASE EXPLAIN WHAT YOU MEAN BY THE BASIC ECONOMIC**  
5 **ASSUMPTIONS MADE BY THE APPLICANTS.**

6 **A.** In preparing for this transaction, CenturyLink has made some basic assumptions  
7 about the expenses that Qwest incurs, such as *reciprocal compensation*, and the  
8 revenue it receives, such as inter- and intrastate access charges. In the case of  
9 ISP-bound traffic, Qwest and CenturyLink have taken the position that unless the  
10 ISP's modem is in the same local calling area as their customer, then the call is a  
11 toll call and access charges apply. While the *Core ISP Order* and the D.C. Circuit  
12 Court's affirmation reject this interpretation, Level 3 expects Qwest to continue to  
13 argue—wherever and whenever it can—that "VNXX" traffic is not covered by the  
14 FCC's established regime for ISP-bound traffic. One question for the  
15 Commission is whether the Combined Entity is assuming it will receive access  
16 charges for ISP-bound traffic, thus inflating its revenue, or whether it will pay the  
17 reciprocal compensation rate, thus reducing some revenue. The second question  
18 is how either outcome impacts the ability of the Combined Entity to meet its  
19 commitments based on its financial projections.

20  
21 **Q. IS THE ONLY QUESTION SURROUNDING ISP-BOUND TRAFFIC THE**  
22 **TERMINATION RATE FOR THE TRAFFIC?**

23 **A.** No. The classification of ISP-bound traffic impacts more than compensation. It  
24 goes to whether the Combined Entity can shift the cost of interconnection for  
25 facilities on its side of the network to its competitors.

1   **Q.     PLEASE EXPLAIN.**

2   **A.**    In the past, Qwest has used the now discredited legal theory that ISP-bound  
3           traffic falls under Section 251(g) to argue that such traffic cannot be counted as  
4           local traffic when calculating the relative use factor ("RUF") charges that apply to  
5           local interconnection facilities. RUF charges apportion the cost of an  
6           interconnection facility based on the flow of the traffic. So, if all the traffic on a  
7           facility was local and Qwest delivered 80 percent, Qwest credits the terminating  
8           carrier for that percentage of the usage. However, Qwest has argued that ISP-  
9           bound traffic must be excluded from the calculation of RUF charges because  
10          Qwest claims it does not fall within the scope of Section 251(b)(5). That  
11          argument was cut out from under Qwest and CenturyLink by the *D.C. Circuit*  
12          *Decision*. It's unfortunate, but the acceptance of Qwest's flawed position by a  
13          number of states has resulted in millions of dollars in subsidies by competitive  
14          carriers for the network operations of Qwest.

15

16   **Q.     CAN YOU PLEASE BRIEFLY SUMMARIZE THE LEGAL TREATMENT OF**  
17   **ISP-BOUND TRAFFIC?**

18   **A.**    Yes, based on the *D.C. Circuit Decision* upholding the FCC's *Core ISP*  
19           *Order*, all ISP-bound traffic falls under the scope of Section 251(b)(5). The Court  
20           also upheld the FCC's ability to set the rate for ISP-bound traffic under its Section  
21           201 authority because ISP-bound traffic is interstate in nature. Since the traffic  
22           falls under 251(b)(5), it is subject to the Part 51 Rules. The application of those  
23           rules to ISP-bound traffic is not new, because even when the FCC tried to  
24           regulate ISP-bound traffic under 251(g), it was **explicit** that the finding did not  
25           "alter carriers' other obligations under our Part 51 rules, 47 C.F.R...."<sup>5</sup> Under

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<sup>5</sup> *ISP Remand* at Footnote 149

1 those rules: "A LEC may not assess charges on any other telecommunications  
2 carrier for telecommunications traffic that originates on the LEC network."<sup>6</sup> Now  
3 that the FCC's legal basis for treating such traffic as covered by Section  
4 251(b)(5) in the Core ISP Order has been affirmed by the D.C. Circuit Court, the  
5 application of the Part 51 rules to ISP-bound traffic is settled and the Combined  
6 Entity may not assess RUF charges on ISP-bound traffic.

7 Despite the clarity of the *D.C. Circuit Decision* and the *Core ISP Order*,  
8 Level 3 expects the Combined Entity to continue to argue the opposite. Such a  
9 refusal in the face of this clear ruling will result in unnecessarily adding more  
10 complaints to the Commission's docket. It is in everyone's best interests to avoid  
11 any additional litigation on these issues.

12

13 **Q. HAS CENTURYLINK AGREED TO PAY RECIPROCAL COMPENSATION ON**  
14 **ALL ISP-BOUND TRAFFIC?**

15 **A.** Yes. Embarq, which is now a subsidiary of CenturyLink, pays \$.0004 per  
16 minute of use for ISP-bound traffic exchanged with Level 3.<sup>7</sup> In that agreement,  
17 ISP-bound traffic "includes ... traffic provisioned using virtual NXXs."<sup>8</sup>

18

19 **Q. PLEASE SUMMARIZE LEVEL 3's POSITION ON RECIPROCAL**  
20 **COMPENSATION FOR ISP-BOUND TRAFFIC AND RUF CHARGES IN THIS**  
21 **PROCEEDING.**

22 **A.** The Commission needs to resolve the treatment of ISP-bound traffic for two  
23 reasons. The first is so that it can better understand the basic economic  
24 assumptions made by Qwest and CenturyLink that underlie this transaction. If the

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<sup>6</sup> As part of the *ISP Remand Order*, the Commission deleted the word "local" from its original rule.

<sup>7</sup> It's worth noting that the rate is lower than the \$.0007 set by the *ISP Remand Order*.

<sup>8</sup> See Section 55.1, Part F, Master Interconnection, Collocation & Resale Agreement for the State of Nevada, August, 2005

1 business model for the Combined Entity is based in part on continuing to try to  
2 charge access fees on ISP-bound traffic and shifting network expenses to  
3 competitive providers, the Commission needs to understand this because the law  
4 no longer supports that assumption. Then, the Commission needs to determine  
5 whether a transaction based on such an illegal assumption is in the public  
6 interest.

7 The second reason is to bring the Combined Entity in line with the law  
8 and to make sure that companies can focus on building their networks and  
9 dealing with integration issues rather than fighting old battles that have been  
10 settled by federal law.

11  
12 **Q. ARE THERE OTHER POLICY ISSUES THE COMMISSION SHOULD**  
13 **CONSIDER IN RESOLVING INTERCARRIER COMPENSATION FOR ISP-**  
14 **BOUND TRAFFIC?**

15 **A.** Yes. While the country, and especially regulators, are focused on ensuring  
16 ubiquitous deployment of broadband facilities, the simple truth is that for the  
17 foreseeable future, dial-up internet access will remain a primary vehicle for  
18 internet access for many residents in Arizona and across the country. Whether it  
19 is because of price or lack of access to a broadband provider, dial-up access will  
20 remain a necessity for many Americans for years to come. The Commission  
21 must consider the future of dial-up services as part of any state plans to roll out  
22 broadband access. Any money spent by either the Combined Entity or the  
23 competitive industry fighting over the compensation regime for dial-up services is  
24 money that could have been spent on broadband deployment.

25 When the FCC adopted the *ISP Remand Order* in 2001, it did so with the  
26 goal of stopping what it saw as an arbitrage opportunity. The FCC did that by

1       reducing the compensation rate, capping the amount of compensable traffic and  
2       excluding new markets from any compensation regime. However, a few years  
3       later, the FCC found that the arbitrage threat was gone and lifted the cap on  
4       compensable traffic and the new market exclusion. In supporting its decision, the  
5       FCC cited the decrease in dial-up traffic and the increasing migration of  
6       Americans to broadband internet access services.

7               One of the "compelling" events that Qwest and CenturyLink have touted  
8       to shareholders is that the Combined Entity will be a stronger company with an  
9       "extensive 173,000 mile fiber network" and the "enhanced ability to competitively  
10      rollout strategic products such as IPTV and other high-bandwidth services"<sup>9</sup> that  
11      will be able to continue its broadband deployment. Meeting the Company's  
12      economic assumptions will be crucial to that expanded deployment of broadband  
13      services. And while that transition occurs, it is important to ensure that all end  
14      users can access the internet, not just those who purchase broadband services  
15      from the Combined Entity. Resolving these settled issues of compensation for  
16      ISP-bound traffic and the treatment for RUF charges will ensure that companies  
17      devote their resources to broadband deployment while at the same time ensuring  
18      that a competitive market exists for dial-up services for those consumers who  
19      choose not to or are not afforded the opportunity to purchase broadband access.

20  
21   **Q.   DOES LEVEL 3 HAVE ANY SPECIFIC RECOMMENDATIONS FOR THE**  
22   **COMMISSION?**

23   **A.**   Yes, Level 3 recommends that any order granting approval for the transaction  
24       include the following language:

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<sup>9</sup> See:  
<http://www.centurylinkqwestmerger.com/downloads/presentations/Investor%20Presentation-4-22-10.pdf>, Slide 8

1        1.        The Combined Entity shall compensate terminating carriers at the  
2        appropriate rate for all locally dialed ISP-bound traffic, and all locally dialed ISP-  
3        bound traffic shall include traffic provisioned using "virtual NXX codes."

4        2.        The Combined Entity shall treat all locally dialed ISP-bound traffic,  
5        including any "virtual NXX traffic," as telecommunications traffic in the calculation  
6        of relative use facilities for the purposes of 51 C.F.R. § 703(b).

7                By adopting these conditions, the Commission will provide the explicit  
8        guidance that the industry, regulators and courts have sought since the release  
9        of the *ISP Remand Order*. With that issue resolved, the industry can turn its  
10       attention to deploying capital in a manner that will grow networks and help  
11       expand broadband networks across the country instead of funding litigation. It's  
12       time that the telecommunications industry stop paying by the hour to determine  
13       what it can charge by the minute.

14  
15    **Q.        PLEASE EXPLAIN WHY LEVEL 3 WANTS ALL CONTRACTS FOR**  
16    **TELECOMMUNICATIONS SERVICES OR NETWORK INTERCONNECTION**  
17    **BETWEEN QWEST AND CENTURYLINK MADE AVAILABLE TO THE**  
18    **PUBLIC.**

19    **A.**        A major theme for all parties filing testimony in this proceeding is the concern that  
20       the Combined Entity will be able to use its unique corporate structure and  
21       regulatory status to establish preferential deals between the carriers for  
22       interconnection, access to each other's poles, ducts and conduits, the exchange  
23       of traffic, special access or other switched access services. Under these  
24       circumstances, the Combined Entity could also impose additional costs on its  
25       competitors. Level 3 believes that by making all agreements between the carriers  
26       public and available for public inspection, the public interest will be furthered.

1

2 **Q. WILL MAKING THE DEALS PUBLICLY AVAILABLE RESOLVE LEVEL 3's**  
3 **CONCERN?**

4 **A.** No, not by itself. In addition to making the contracts available, the Combined  
5 Entity should allow any party to avail itself of any specific term or rate without  
6 regard for any volume or term commitment. As discussed, the Combined Entity  
7 will be in a unique position to identify opportunities where it can leverage the  
8 network of its affiliates to its advantage and perhaps to the disadvantage of its  
9 competitors. Volume and term commitments in this context are inappropriate  
10 since the CenturyLink territories are generally free from landline competition. In  
11 the past, Qwest and CenturyLink have dealt with each other in arms-length  
12 transactions. This merger changes that negotiating dynamic. The Commission  
13 can ensure that competition is not harmed, and the public interest met, by  
14 ensuring that transactions between the Applicants are open for public review and  
15 that the appropriate rates can be selected by other carriers.

16

17 **Q. PLEASE DESCRIBE LEVEL 3's CONCERNS REGARDING HOW THE**  
18 **COMBINED ENTITY WILL TREAT 8YY TRAFFIC.**

19 **A.** This issue involves problems that Level 3 has experienced with the routing of  
20 wireless originated 8YY traffic primarily but is something that could happen with  
21 any kind of 8YY traffic. As is relevant to this proceeding, Embarq is the ILEC  
22 entity that is engaged in an access charge arbitrage scheme Level 3 seeks to  
23 address.

24 An example of the scheme is described in the following scenario: a  
25 wireless 8YY call is originated in Boise and the call is routed to Embarq, who is  
26 providing transport services to the wireless carrier. In this call flow, Level 3 is the

1 IXC providing the 8YY service. When the call hits the Embarq network, Embarq  
2 must route the call to Level 3. However, instead of handing the traffic off at the  
3 Qwest tandem in Boise or through some other interconnection point in Idaho,  
4 Embarq backhauls the traffic to its switch in or near Spokane and then sends it  
5 back to the Qwest tandem in Boise. What is troublesome about this scenario is  
6 that Embarq then bills Level 3 for all the transport from the point of picking up the  
7 call in Boise to Spokane and back to Boise. Level 3 has been disputing these  
8 transport charges and believes that Embarq should be limiting its tandem  
9 transport charges to the amount of transport that represents the distance  
10 between the Level 3 POI and the nearest tandem. Level 3's recommendation in  
11 this example also reflects the industry practice.

12  
13 **Q. WHY IS THIS ISSUE IMPORTANT IN THIS PROCEEDING?**

14 **A.** This issue is important for a number of reasons. First, it represents the type of  
15 inefficient network routing that the Combined Entity is engaging in and could  
16 continue to engage in for the purposes of increasing the costs it imposes on  
17 competitors. With Embarq, CenturyLink and Qwest all operating as incumbents in  
18 the Western U.S., the Combined Entity will have an incentive to home traffic  
19 across its affiliates to maximize transport costs. That would not be in the public  
20 interest.

21 Second, because routing can be altered relatively easily, the Combined  
22 Entity can implement this type of routing changes with no or little notice to the  
23 industry. Then like traffic pumping, the impacted carrier will not know about the  
24 excessive charges until it is too late. At that point, carriers will open disputes and  
25 some party will seek self-help, with the resulting disputes landing in either courts  
26 or before the Commission.



1           The third and final reason for why it is an important issue is that the  
2           Commission needs to understand if the Combined Entity has included in its  
3           financial projections revenues from excessive transport charges for 8YY traffic.  
4           The Commission will need to have a complete understanding of those  
5           assumptions before it can determine if this transaction is in the public interest.

6  
7   **Q.   WHAT IS LEVEL 3'S RECOMMENDATION ON THIS ISSUE?**

8   **A.**   With a few common sense conditions, the Commission can resolve this issue  
9           and allow the transaction to move ahead. To do that, Level 3 proposes the  
10          following language: "The Combined Entity agrees that it will limit any tandem  
11          transport charges for 8YY traffic to charges based upon the nearest tandem  
12          identified in the LERG to the originating point of each call." This simple  
13          requirement will eliminate any incentive for the Combined Entity to re-home 8YY  
14          traffic through inefficient routes and creates the incentive for bringing traffic to the  
15          nearest, most efficient tandem.

16  
17   **Q.   PLEASE EXPLAIN LEVEL 3's CONCERNS REGARDING EXISTING BILLING**  
18   **DISPUTES BEING LEVERAGED AGAINST A COMPETITOR.**

19   **A.**   This issue focuses on the ability of the Combined Entity to leverage existing  
20          billing disputes with one ILEC affiliate to slow or refuse to provision new services  
21          by another ILEC affiliate. For example, assume that Level 3's billing dispute with  
22          Embarq for improper homing of 8YY traffic continues after the transaction closes.  
23          The concern is that one of the other entities, CenturyLink or Qwest, would refuse  
24          to provision or process a request for interconnection or some other service order  
25          based on the outstanding dispute with Embarq. Level 3 does not believe that the  
26          transaction should allow the Combined Entity to refuse to provision services

1 because of billing disputes that existed prior to the transaction or for unique  
2 billing disputes that arise afterwards. Absent the proper conditions, the Combined  
3 Entity will be able to impair competition by throwing up new roadblocks to the  
4 provision of services. But for the completion of the transaction, the existing  
5 disputes would not allow Qwest from provisioning services by citing a billing  
6 dispute between Level 3 and Embarq. This transaction should not create that  
7 incentive.

8  
9 **Q. WHAT IS LEVEL 3's RECOMMENDATION ON THIS ISSUE?**

10 **A.** Level 3 believes that with a simple, common sense condition, the Commission  
11 can resolve this issue and allow the transaction to proceed. Level 3 proposes the  
12 following language be added to any order:

13 "The Combined Entity shall not refuse to provision services, process  
14 orders or threaten disconnection across the entire footprint of the  
15 Combined Entity based on a billing or other commercial dispute between  
16 any telecommunications provider and any one affiliate of the Combined  
17 Entity."

18 This condition will keep the playing field level between the Combined Entity and  
19 its competitors. Because a dispute between Level 3 and Embarq could not be  
20 legally used to threaten disconnection in the Qwest territory today, this condition  
21 preserves the status quo and eliminates any incentive for the Combined Entity to  
22 use its size to force parties into unreasonable settlements.

23  
24  
25  
26

1   **Q.   DOES LEVEL 3 HAVE A POSITION ON THE ISSUES REGARDING**  
2       **OPERATIONAL SUPPORT SYSTEMS ("OSS") RAISED BY THE JOINT**  
3       **CLECS?**

4   **A.**   Yes. Like many parties, Level 3 is concerned about the ability of the Combined  
5       Entity to meet its obligations regarding OSS. Level 3's experiences in Maine,  
6       Vermont and New Hampshire following the Verizon and Fairpoint transaction are  
7       a clarion's call for vigilant oversight when a relatively untested independent ILEC  
8       takes over the significantly greater operations of a RBOC. The ink has not dried  
9       on the recent transfer of the West Virginia operation of Verizon to Frontier  
10      Communications and a complaint has been filed alleging Frontier has not met its  
11      OSS commitments.<sup>10</sup>

12           Level 3 does not rely heavily upon unbundled network elements to  
13      provide services like other competitive providers, however, Level 3's experience  
14      for provision of wholesale services from Qwest and CenturyLink is anecdotally  
15      similar to the competitive comments. Ensuring an even playing field in the  
16      wholesale market is a crucial litmus test for whether the transaction is in the  
17      public interest. Level 3 agrees that conditions are required to ensure wholesale  
18      transactions are completed in a timely, fair and efficient manner.

19  
20  
21

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<sup>10</sup> *Commission Order*, Petition to Reopen by FiberNet LLC, Case No. 09-871-T-PC, Frontier Communications Corporation (full cite omitted), Public Service Commission of West Virginia, August 16, 2010. The Commission denied FiberNet's petition to reopen because most of the issues happened after the sale from Verizon to Frontier. The Commission also noted that the issues raised could be best handled in a complaint proceeding; the Commission ruled that the issues would be transferred to a complaint proceeding and also determined that the parties would be given time to mediate the disputes. If mediation does not resolve the issues, the parties are to notify the Commission and the matter will be handled in the complaint case. *Commission Order*, pp. 2-3; see also *FiberNet, LLC v. Frontier West Virginia, Inc.*, Case No. 10-1289-T-C.

1   **Q.    WHY ARE QWEST'S CARRIER BILLING PRACTICES IMPORTANT FOR THE**  
2       **COMMISSION TO UNDERSTAND AND CHANGE AS A CONDITION OF**  
3       **APPROVAL?**

4   **A.**   At a high level, Qwest's existing carrier billing practices must be modified as a  
5       condition of approval for two reasons. First, any improper or inappropriate billing  
6       practice can have a significant detrimental effect on competitors. Any delays in  
7       payment or underpayment to a competitor harms its financial situation and can  
8       even jeopardize a carrier's survival. Second, if CenturyLink is basing any of its  
9       financial projections on a continuation of some of the aggressive billing practices  
10      of Qwest, it is important for the Commission to understand this and assess the  
11      degree to which such practices not only threaten the competitive industry and  
12      other carriers such as rural carriers, but also the degree to which such practices  
13      reflect some underlying financial weakness that could jeopardize CenturyLink's  
14      commitments to the Commission and its customers.

15

16   **Q.    CAN YOU CITE TO ANY EXAMPLES OF BILLING PRACTICES THAT**  
17       **WARRANT THE COMMISSION MAKING A CHANGE AS A CONDITION OF**  
18       **APPROVAL?**

19   **A.**   Yes. A little over a year ago, Qwest informed Level 3 that it would no longer  
20       accept any billing disputes that were lodged with Qwest 90 days after the date of  
21       the invoice. When challenged on the lawfulness of establishing this apparent  
22       arbitrary barrier to lodging good faith billing disputes and asked to point to any  
23       legal authority that allows Qwest to implement this practice, Qwest failed to  
24       provide any satisfactory legal explanation.

25

26

1   **Q.    WHY IS THIS IMPORTANT?**

2   **A.**    The arbitrary cut-off date imposed by Qwest curtails a CLEC's ability to lodge  
3           and collect on a legitimate billing dispute and rewards Qwest by allowing it to  
4           keep monies it is otherwise not entitled to. Given the complexity of intercarrier  
5           billing, it is not uncommon for billing errors to be discovered months—or even  
6           years—after the bills have been received. Qwest's practice in this regard is an  
7           assertion of its far greater financial and regulatory litigation resources to the  
8           effect that carriers are faced with the choice of either expending scarce  
9           resources to litigate with Qwest or just accept its unlawful practice. Qwest should  
10          not be allowed to arbitrarily "deem" a 90-day cut-off period to be in effect to the  
11          harm of CLECs that rely upon them as an RBOC. A continuation of this practice  
12          by the Combined Entity is improper and should not be countenanced by approval  
13          of the transaction without this practice being ceased.

14

15   **Q.    IS THERE ANOTHER BILLING PRACTICE THAT YOU CAN CITE TO THAT**  
16   **THE COMMISSION SHOULD INVESTIGATE?**

17   **A.**    Yes. Level 3 is aware of another example in which Qwest has refused to follow  
18          the terms of its own tariffs and has billed Level 3 for charges that are not included  
19          within the applicable intrastate tariff. In this case, in the absence of a specific  
20          provision in Qwest's intrastate tariff addressing expanded interconnection, Qwest  
21          nonetheless billed, and continues to bill, Level 3 a rate that is contained in its  
22          interstate tariff (rather than its intrastate tariff), which does have the specific  
23          provision in question. In this context, it is critical that the Commission affirm the  
24          Combined Entity's obligation to strictly abide by the terms of its tariffs, amending  
25          them as necessary to allow for the requisite Commission scrutiny and industry  
26          input before Qwest bills and attempts to collect intercarrier charges.

1

2 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

3 **A.** In my testimony, Level 3 has highlighted a number of areas where conduct by the  
4 Combined Entity could threaten to impair competition in general and especially in  
5 the Qwest operating territory. That conduct ranges from forcing competitors to  
6 subsidize the network operations of the Combined Entity through RUF or  
7 excessive tandem transport charges for 8YY traffic to threatening nationwide  
8 disconnection over unrelated billing disputes. It is imperative the Commission  
9 understand and address these concerns now to ensure that the public interest is  
10 met by this transaction. Level 3 has proposed simple, common sense solutions to  
11 the issues it has raised. Level 3 urges the Commission to protect competition and  
12 adopt these conditions.

13

14 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

15 **A.** Yes it does. Thank you.

BEFORE THE ARIZONA CORPORATION COMMISSION

KRISTIN K. MAYES

Chair

GARY PIERCE

Commissioner

PAUL NEWMAN

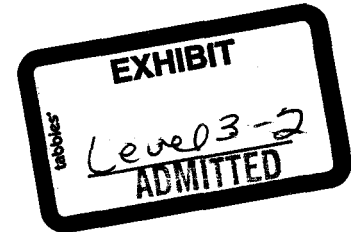
Commissioner

SANDRA D. KENNEDY

Commissioner

BOB STUMP

Commissioner



JOINT NOTICE AND APPLICATION OF	)	DOCKET NOS.	T-01051B-10-0194
QWEST CORPORATION, QWEST	)		T-02811B-10-0194
COMMUNICATIONS COMPANY, LLC, QWEST	)		T-04190A-10-0194
LD CORP., EMBARQ COMMUNICATIONS,	)		T-20443A-10-0194
INC. D/B/A CENTURYLINK	)		T-03555A-10-0194
COMMUNICATIONS, EMBARQ PAYPHONE	)		T-03902A-10-0194
SERVICES, INC. D/B/A CENTURYLINK, AND	)		
CENTURYTEL SOLUTIONS, LLC FOR	)		
APPROVAL OF THE PROPOSED MERGER OF	)		
THEIR PARENT CORPORATIONS QWEST	)		
COMMUNICATIONS INTERNATIONAL INC.	)		
AND CENTURYTEL, INC.	)		

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SURREBUTTAL TESTIMONY

OF

RICHARD E. THAYER

ON BEHALF OF

LEVEL 3 COMMUNICATIONS, LLC

NOVEMBER 10, 2010

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**I. INTRODUCTION OF WITNESS**

**Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

A. My name is Richard E. Thayer. I work for Level 3 Communications, LLC ("Level 3").  
My business address is 1025 Eldorado Boulevard, Broomfield, Colorado, 80021.

**Q. WHAT IS YOUR POSITION AT LEVEL 3?**

A. I am Senior Corporate Counsel. I have been with Level 3 for eight years.

**Q. ARE YOU THE SAME RICHARD E. THAYER WHO FILED DIRECT TESTIMONY IN THIS DOCKET ON SEPTEMBER 27, 2010.**

A. Yes.

**II. SUMMARY OF SURREBUTTAL TESTIMONY**

**Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

In this round, I respond to specific issues raised in rebuttal testimony regarding the pending indirect transfer of control of Qwest Communications International ("Qwest") to CenturyLink ("CenturyLink"). As I did in initial testimony, I will refer to the post-closing company as the "Combined Entity".

**Q. PLEASE DESCRIBE THE RESPONSE OF LEVEL 3 TO THE REBUTTAL TESTIMONY OF QWEST AND CENTURYLINK.**

A. Qwest and CenturyLink have been evasive and disappointing in both rounds of testimony. Given the scope of this transaction and the role both companies play in the state's telecommunications marketplace, Level 3 agrees with Arizona Corporation Commission Utility Division witnesses that the merger cannot be completed without conditions.<sup>1</sup> It is clear that the basic theme of the Joint Petitioners is to brush aside the

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<sup>1</sup> Attachment 1, Direct Testimony of Armando Fimbres on Behalf of Utility Division, Arizona Corporation Commission, October 13, 2010, at page 5. In the Matter of the Joint Petition

1 concerns of the Utility Division and interveners. Qwest witness Robert Brigham leads the  
2 charge when he attacks the testimony of Dr. Ankum and Mr. Gates as “highly  
3 speculative” and criticizes the competitive industry for not providing any “evidence  
4 suggesting that the claims are likely to become a reality in Arizona.”<sup>2</sup> This approach puts  
5 the Commission, the public and the competitive industry in the untenable position of  
6 having to know how the Combined Entity will act *before* the Combined Entity will  
7 answer any questions. That’s a disingenuous path to travel for the Joint Petitioners.

8 **Q. WHY IS THAT DISINGENUOUS?**

9 A. It is disingenuous for the Joint Petitioners to demand that the Commission, and  
10 competitors predict the future when the Combined Entity won’t tell anyone how it  
11 intends to function. “Trust us” is not an answer that meets the public interest test that the  
12 Joint Petitioners must clear to close this transaction. The burden is on the Joint Petitioners  
13 to show that this transaction is in the public interest and as the Utility Division testifies,  
14 that test has not been met and cannot be met without conditions.

15 **Q. THE JOINT PETITIONERS ARGUE THAT MANY OF THE ISSUES RAISED**  
16 **ARE COMMERCIAL IN NATURE AND THAT THIS PROCESS SHOULD NOT**  
17 **BE USED TO RENEGOTIATE CONTRACTS. HOW DOES LEVEL 3**  
18 **RESPOND?**

19 A. The issues raised by the Competitive Industry, and especially Level 3, are not just  
20 commercial issues because they go to the ability of companies to compete against the  
21 Combined Entity. In fact, many of the issues revolve around the legal obligations of both

---

for Approval of Indirect Transfer of Control of Qwest Operating Companies to  
CenturyLink, Docket No.T-01051B-10-0194 et al. [hereafter “Fimbres Direct”].

<sup>2</sup> Rebuttal Testimony of Robert Brigham on Behalf of Qwest Corporation, October 27, 2010, at  
page 4. In the Matter of the Joint Petition for Approval of Indirect Transfer of Control of  
Qwest Operating Companies to CenturyLink, Docket No.T-01051B-10-0194 et al.  
[“Brigham Rebuttal”]

1 Qwest and CenturyLink. It seems that the Joint Petitioners prefer a “divide and conquer”  
2 approach. They would prefer to push those issues, which relate to the Combined Entity’s  
3 legal obligations, into commercial negotiations or individual complaint cases if the  
4 Combined Entity does not get its way. This lack of transparency should raise red flags for  
5 everyone involved in this proceeding.

6 **III. THE COMMISSION SHOULD CONDITION APPROVAL OF THE MERGER BY**  
7 **PROHIBITING THE COMBINED ENTITY FROM LEVERAGING BILLING**  
8 **DISPUTES TO SLOW OR REFUSE TO PROVIDE SERVICES.**  
9

10 **Q. CAN YOU PLEASE BRIEFLY SUMMARIZE LEVEL 3’s CONCERN WITH**  
11 **RESPECT TO THE COMBINED ENTITY LEVERAGING BILLING DISPUTES?**  
12

13 A. Yes. In my testimony, Level 3 raises a concern that post-closing, the Combined Entity  
14 will leverage billing disputes with one affiliate to slow roll or refuse to provision services  
15 post-closing. Let me provide an example. Assume that Level 3 and Qwest have a billing  
16 dispute for \$100 for transport charges in Arizona. We’ll also assume that Level 3 has no  
17 outstanding billing disputes with CenturyLink. After the closing, Level 3 submits an  
18 order for a transport to meet a customer critical deadline in a CenturyLink territory in any  
19 state. Level 3 is concerned that CenturyLink will rely upon the open billing dispute with  
20 Qwest to refuse delivering the transport.

21 **Q. IN HIS REBUTTAL TESTIMONY, MR. HUNSUCKER CALLS THIS**  
22 **“SPECULATIVE BEHAVIOR” AND CRITICIZES YOU FOR RAISING**  
23 **“WHAT” MIGHT HAPPEN.<sup>3</sup> HOW DOES LEVEL 3 RESPOND?**  
24

25 A. Hunsucker’s response continues the theme: unless you know the future, you will have to  
26 trust the Combined Entity. It is an “Ask but We Won’t Answer” defense. That argument

---

<sup>3</sup> Rebuttal Testimony of Michael Hunsucker On Behalf of Qwest Corporation, October 27, 2010, page 73, lines 8 to 18. In the Matter of the Joint Petition for Approval of Indirect Transfer of Control of Qwest Operating Companies to CenturyLink, Docket No. T-01051B-10-0194 et al. [“Hunsucker Rebuttal”]

1 is especially absurd with this issue. First, the ability to leverage billing disputes between  
2 the two companies cannot occur until *after* this transaction closes. So contrary to Mr.  
3 Hunsucker's protestations, the Commission and competitive industry have to question  
4 how the Combined Entity will act.

5 The second reason to address this issue now is because Level 3 has experienced this exact  
6 type of conduct from other companies post merger. The problems arise normally through  
7 internal process changes or new contract interpretations. These changes come without  
8 warning and are first encountered when a service order is held or rejected. Such conduct  
9 escapes Commission review, causes delay and harms competition. The lengths that  
10 ILECs will go to reinterpret contract clauses bears proof that the contract provisions do  
11 not provide the security that would prevent CenturyLink or Qwest from defying the "ICA  
12 terms that legally dictate the operating relationship" between the companies.<sup>4</sup>

13 Mr. Hunsucker's response is further weakened since he does not try to prove his point  
14 with any contract language. The simple truth is that the interconnection agreements with  
15 Qwest and CenturyLink do not expressly prohibit an affiliate or other entity from  
16 leveraging billing disputes across the corporate family because they were not written with  
17 an understanding that Qwest and CenturyLink would seek a merger. Without such  
18 express language, the Combined Entity can take the unilateral position that it does not  
19 have to provide services in the event of a billing dispute between a wholesale customer  
20 and any other affiliate of the Combined Entity.

21 **Q. ARE THERE OTHER ISSUES IN THIS PROCEEDING THAT RELATE TO**  
22 **LEVERAGING DISPUTES BETWEEN AFFILIATES?**  
23

---

<sup>4</sup> Id. at lines 16-18.

1 A. Yes, in initial testimony, Level 3 raised the issue of Qwest unilaterally imposing a 90-day  
2 time frame in which a carrier had to identify and raise a billing dispute or it was deemed  
3 waived. Since the ability to identify and raise billing disputes is a crucial tool for each  
4 carrier, neither Qwest nor CenturyLink should be allowed to arbitrarily short-circuit a  
5 company's ability to raise disputes. In addition to the inability to record a legitimate  
6 claim, if the Combined Entity is allowed to leverage billing disputes across entities or  
7 states it will gain extra leverage over entities that try to raise disputes outside of the  
8 arbitrary windows that the Combined Entity establishes.

9 **Q. DID QWEST OR CENTURYLINK ADDRESS THE 90-DAY DEADLINE IN**  
10 **THEIR TESTIMONY?**

11  
12 A. Yes, and the response of Qwest witness Karen Stewart proves Level 3's point. Stewart  
13 admits that Qwest is "in the process of negotiating agreements that will provide more  
14 explicit guidelines" in those instances where express terms are not identified.<sup>5</sup> Qwest  
15 goes on to say that resolution of the issue is between the companies. Nothing can be  
16 farther from the truth because it shifts the power to reach fair and equitable terms and  
17 conditions to the Combined Entity. Qwest and CenturyLink should offer the same basic  
18 terms and conditions to all carriers. By forcing each carrier into "one-off" negotiations,  
19 the Combined Entity can use its dominant position to force vastly different terms on  
20 different companies. Such treatment is not in the public interest because it will cause  
21 varying degrees of harm across the industry.

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<sup>5</sup> Rebuttal Testimony of Karen A. Stewart on Behalf of Qwest Corporation, October 27, 2010, at pages 42-43. In the Matter of the Joint Petition for Approval of Indirect Transfer of Control of Qwest Operating Companies to CenturyLink, Docket No. T-01051B-10-0194 et al. ["Stewart Rebuttal"]

1 **Q. CAN THESE MARKET PROBLEMS BE SOLVED THROUGH CONDITIONS**  
2 **ON THIS TRANSACTION?**  
3

4 A. Yes. By imposing such requirements on the Combined Entity, the Commission will  
5 ensure that competition is not harmed through dilatory or unilaterally arbitrary conduct.  
6 Any delay in the provision of services harms competition and is unacceptable. The  
7 Commission can avoid these harms by adopting these simple, targeted, common sense  
8 conditions. If the Combined Entity has no intentions of engaging in such conduct, then  
9 such conditions would be something they can support. If the Combined Entity does not  
10 want to declare its intentions, the Commission must act to preserve the public interest in  
11 competition on a post-closing basis.

12 **Q. WHAT IS THE RECOMMENDATION OF LEVEL 3?**

13 A. In order to preserve competition and ensure that the public interest is met, Level 3 urges  
14 the Commission to condition its approval by prohibiting the combined entity from using a  
15 billing dispute that arises between a telecommunications carrier and either Qwest or  
16 CenturyLink to delay or refuse to provision services by the other affiliate or as a result of  
17 an unrelated matter.

18 **IV. THE COMMISSION SHOULD CONDITION APPROVAL WITH A COMMON-**  
19 **SENSE CONDITION THAT PROHIBITS CENTURYLINK FROM**  
20 **ESTABLISHING A RURAL CLEC IN QWEST OPERATING TERRITORIES IN**  
21 **ORDER TO ARBITRAGE ACCESS RATES.**  
22

23 **Q. CAN YOU PLEASE SUMMARIZE LEVEL 3's CONCERN WITH RESPECT TO**  
24 **THE COMBINED ENTITY ESTABLISHING A RURAL CLEC?**

25 A. Yes. As I discussed in my initial testimony, Level 3 is focused on one particular form of  
26 arbitrage. It involves a rural local exchange company establishing a competitive local  
27 exchange carrier to provide services in the less populated areas of an adjoining territory

1 of a Regional Bell Operating Company. In that case, the rural competitive local exchange  
2 carrier is allowed to charge the same access rates as its rural parent instead of being  
3 capped at the rate established for the RBOC. Level 3 is concerned that on a post-closing  
4 basis, CenturyLink will establish rural competitive local exchange carriers in qualifying  
5 Qwest territories. The Combined Entity could then develop a business plan that attracts  
6 the rural CLEC high-volume users of access minutes, and charge the higher CenturyLink  
7 rate instead of the lower Qwest rate.

8 **Q. DID QWEST AND/OR CENTURYLINK RESPOND TO LEVEL 3'S**  
9 **CONCERNS?**

10 A. No. Rather than respond to Level 3's concerns directly, Mr. Hunsucker references a  
11 string of cases involving Qwest and various rural LECs now pending in various states,  
12 but nowhere does he address or admit that CenturyLink is a largely rural LEC, enjoys  
13 significantly higher terminating access charges, and may therefore have incentive to  
14 arbitrage rate differentials that exist between rural and incumbent LEC rates.<sup>6</sup> As with  
15 leveraging billing disputes across the Combined Entity, this issue is one where the harm  
16 can be prevented ahead of time, but is certain to occur and harm competitors if the  
17 Commission waits until after the fact to redress it.<sup>7</sup> Due to the potential harm that would

---

<sup>6</sup> See Hunsucker Rebuttal Testimony at page 48, lines 10-19, and footnote 33, which cites several Qwest cases, but makes no mention of CenturyLink.

<sup>7</sup> See, e.g. *Qwest Communications Corporation v. Superior Telephone Cooperative, et al.*, IUB Docket No. FCU-07-2, 2009 Iowa PUC Lexis 428, Final Order (Iowa Util. Bd. Sept. 21, 2009)(Both Qwest and the Iowa Utilities Board note violations of the filed rate doctrine as applied to intrastate tariffs, discriminatory treatment of LEC customers, and necessity to collect refunds for charges imposed.) It may also be worth noting that the protracted litigation that started at the state level continues to this day despite FCC orders limiting these practices. Without effective state guidance on this issue, high access charge entities will continue to have strong financial incentives to exploit this system. As a result, the Iowa Utilities Board, for example, enacted rules limiting practices where a "LEC's rates for intrastate access services are based, indirectly, on relatively low traffic

1 be caused by such an arbitrage opportunity -- by imposing inappropriate access charges  
2 on traditional Qwest traffic -- the Commission must resolve this issue now.

3 **Q. CENTURYLINK DOES NOT CURRENTLY PROVIDE SERVICE IN ARIZONA.**  
4 **IS THAT ALONE ENOUGH TO PREVENT CENTURYLINK FROM**  
5 **LEVERAGING ARBITRAGE OPPORTUNITIES?**

6 A. No. CenturyLink has been very successful at acquiring and consolidating rural, and now,  
7 RBOC carriers. If the Commission does not establish conditions as Level 3 has  
8 suggested, then CenturyLink could engage in this practice any time it chooses to, leaving  
9 the competitive industry to expensive, time consuming, and, ultimately harmful post-hoc  
10 proceedings to address what is already a known industry problem. In addition, as I  
11 explain more thoroughly below, CenturyLink tends to view the lack of rules as  
12 justification for routing and call classification practices as applied to high volume  
13 wireless traffic that, if they are not clearly unjustified rate arbitrage, they certainly merit  
14 further examination.

15 **Q. IS THERE AN INCENTIVE FOR THE COMBINED ENTITY TO ENGAGE IN**  
16 **SUCH A PRACTICE?**

17 A. As discussed in Level 3's initial testimony, this transaction is one of first impression  
18 where a largely rural, independent local exchange carrier is purchasing a Regional Bell  
19 Operating Company. It will create unique policy issues that have not arisen in traditional

---

volumes, but the LEC then experiences a relatively large and rapid increase in those volumes, resulting in a substantial increase in revenues without a matching increase in the total cost of providing access service." *In re High Volume Access Services*, RMU-2009-0009, Order Adopting Rules (Iowa Util. Bd. June 7, 2010). The RLEC's CLEC customers, however, appealed this case to federal court. Much of this, however, could have been prevented on a forward-looking basis, particularly where, as here, both the FCC and many states have enacted rules that could be readily applied to prevent future harm. Notably, challenges to Iowa Utilities Board regulations limiting traffic pumping schemes have failed. (See, *Adventure Comm'n Tech., L.L.C., vs. Iowa Util. Bd.*, No. C 10-4074-MWB, 2010 U.S. Dist. LEXIS 87250 (USDCA IA Aug. 17, 2010).



1 RBOC or CLEC combinations. One of the reasons why CenturyLink is purchasing Qwest  
2 is to maximize its ability to generate revenues from its assets. That incentive is  
3 heightened when regulatory rules create an opportunity, limitations and mandates as to  
4 the terms and conditions of agreements instead of traditional market forces or contract  
5 negotiations. It would be a normal outgrowth for the Combined Entity to evaluate  
6 whether it can maximize its revenue by pursuing a particular regulatory path. Level 3  
7 does not believe that it is "speculative" for CenturyLink to undertake such an evaluation  
8 because it is in the best interests of the Combined Entity to do that. The broader policy  
9 issue arises when that regulatory opportunity is used in manner that goes beyond the  
10 rationale for creating that policy. That's when regulatory arbitrage occurs.

11 **Q. WHAT WAS THE INTENT OF THE ORIGINAL POLICY ALLOWING RURAL**  
12 **CLECS TO CHARGE THE HIGHER ACCESS RATES OF ITS RURAL**  
13 **PARENT?**

14 A. When the Federal Communications Commission exempted rural CLECs from its order  
15 capping CLEC access rates, it wanted to preserve nascent competition in the more rural  
16 territories of the RBOC.<sup>8</sup> The FCC determined that in less densely populated RBOC  
17 territories, it was unlikely that a competitive local exchange carrier would expand into  
18 those markets.<sup>9</sup> The idea behind the exemption was to provide an incentive for rural  
19 CLECs to provide competitive services in adjoining territories.

---

<sup>8</sup> See 47 C.F.R. § 61.26(f).

<sup>9</sup> The FCC has defined a Rural CLEC as a CLEC that does not service, by originating or terminating traffic within any incorporated place of more than 50,000 inhabitants based on most recently available Census Bureau statistics or an urbanized area as defined by the Census Bureau. See 47 C.F.R. § 61.26(a)(6).

1   **Q.   HOW DOES THIS TRANSACTION IMPACT THE RATIONALE FOR THE**  
2   **FCC'S RURAL CLEC EXEMPTION?**

3   A.   Once the entities are combined, CenturyLink no longer has the incentive to enter an  
4   adjoining Qwest market to compete for new customers if it will be competing against an  
5   affiliate. Instead, its incentive to enter a market will be driven more by a regulatory  
6   opportunity such as extracting rates that it normally would not be able to charge. In this  
7   scenario, the Combined Entity has the incentive to reassign customers if it can increase  
8   access revenue that would normally be generated for calls terminated to a CenturyLink  
9   rural CLEC instead of Qwest. The rationale for encouraging competition has been  
10   replaced with an arrangement that maximizes a regulatory rate and hurts competition by  
11   forcing competitive, terminating carriers to pay more for services because of a loophole  
12   in the rules. Where the incentives to arbitrage are this strong, and the patterns of market  
13   behavior are well known to state regulators nationally and to the FCC, the Commission's  
14   refusal to take action ahead of time and instead waiting until disputes and market harm  
15   occurs, cannot be, and is not, in the public interest.

16   **Q.   ARE THERE OTHER REASONS WHY THE COMMISSION SHOULD**  
17   **CONSIDER REGARDING THIS ISSUE?**

18   A.   In my initial testimony, Level 3 raised this issue in the context of understanding the  
19   financial projections of the Combined Entity. The Commission needs to evaluate whether  
20   the Combined Entity is including any revenue projections from this arbitrage opportunity.  
21   The fact that CenturyLink did not respond to the question speaks volumes of its long-  
22   term plans. Under such circumstances, the Commission should assume that the Combined  
23   Entity will pursue this course for growing its revenue stream.

1 **Q. WHAT IS LEVEL 3's RECOMMENDATION TO THE COMMISSION?**

2 A. Since CenturyLink and Qwest have refused to provide any response to how the  
3 Combined Entity will act if this transaction closes, the Commission should assume that it  
4 will engage in the conduct discussed here. In that case, the Commission should condition  
5 its approval so that the Combined Entity cannot grow its revenues at the expense of  
6 competition by using a regulatory loophole. The Commission can achieve that with a  
7 targeted, common sense condition that requires any rural CLEC established by  
8 CenturyLink that operates in an adjoining Qwest territory to mirror the access charges of  
9 its Qwest affiliate. Such a condition would level the playing field and allow competitors  
10 in the Qwest territories to be treated in a nondiscriminatory manner.

11 **V. THE COMMISSION SHOULD REQUIRE THE COMBINED ENTITY TO LIMIT**  
12 **TRANSPORT CHARGES RELATED TO 8YY CALLS AND DATABASE DIPS.**

13 **Q. DID CENTURYLINK RESPOND TO THE 8YY TRANSPORT ISSUES**  
14 **RAISED IN YOUR INITIAL TESTIMONY?**  
15

16 A. It does not appear to me that CenturyLink addressed the issue Level 3 raised with respect  
17 to the transport incurred for certain wireless calls directed to Level 3's 8YY customers.  
18 My initial testimony involves a call on today's networks so it is not speculative. In that  
19 instance, a call originates on a wireless network. Instead of that call being exchanged and  
20 the database dip being performed at the closest tandem, Embarq has been transporting the  
21 call to a distant tandem. The call is then routed back to the more logical tandem that  
22 should have handled the call in the first instance and handed off to Level 3. The problem  
23 is that CenturyLink charges the full transport to the distant tandem and back.

24 **Q. MR. HUNSUCKER ASSERTS THAT YOU ARE WRONG AND THAT EMBARQ**  
25 **DOES NOT CHARGE FOR ALL OF THE TRANSPORT. DO YOU AGREE?**  
26

1 A. No, I do not. When Mr. Hunsucker says on page 72 of his testimony that the charges are  
2 "limited", Level 3 does not understand whether only some elements are charged or  
3 whether CenturyLink is limiting the mileage of the transport charge. The latter is what  
4 Level 3 believes should be the appropriate resolution but as our bills indicate, that is not  
5 the case.

6 **Q. MR. HUNSUCKER BRUSHES ASIDE THE IMPORTANCE OF THIS ISSUE BY**  
7 **SAYING THAT LEVEL 3 DID NOT RAISE IT WHEN CENTURYTEL**  
8 **PURCHASED EMBARQ.<sup>10</sup> WHAT IS LEVEL 3'S RESPONSE?**  
9

10 A. CenturyLink's response is just more of the same. Qwest and CenturyLink prefer to  
11 demean the issues raised by competitors in this proceeding and cast aspersions on the  
12 motives of any one who has a question. The reason why Level 3 did not raise the issue in  
13 the CenturyLink-Embarq proceeding is simple. At the time of the transaction, Level 3 did  
14 not have a full understanding of this problem. At that time, Level 3 believed it was  
15 limited to one operating territory. We understand the problem now and have a concern  
16 that it might be imported throughout the Qwest operating territory. That's why we've  
17 raised it now. But what is more troubling is CenturyLink's reliance on the lack of  
18 "rules". If no rules exist, what prevents the Combined Entity from adopting that practice  
19 across its operating territory? What prevents the Combined Entity from routing calls that  
20 originate in Arizona out of state in order to leverage the transport costs or establishing an  
21 outsourcing arrangement where Embarq does all database dips for the Combined Entity?  
22 For Level 3, the real issue is whether the Combined Entity exports this practice of  
23 inefficient network routing into Arizona or the rest of the its service territory.

---

<sup>10</sup> Hunsucker Rebuttal at page 73.

1 Such changes can be implemented without Commission review, leaving the competitive  
2 industry in a rearguard battle when it discovers the problem. Such actions will hurt the  
3 competitive industry and represent another opportunity for the Combined Entity to  
4 leverage its market dominance to impose new costs on carriers who will have to turn  
5 around and pass those costs through to consumers. It is hard to see how increased  
6 subsidization of the Combined Entity can benefit consumers and wholesale customers or  
7 be in the public interest.

8 **Q. WHAT IS LEVEL 3'S RECOMMENDATION TO THE COMMISSION?**

9 A. In my initial testimony, Level 3 proposed a targeted, common sense condition to alleviate  
10 the incentives for the Combined Entity to use its market dominance to derive new  
11 revenue from inefficient practices. Mr. Hunsucker's testimony reaffirms the need for this  
12 condition. When a party with market dominance relies upon a lack of rules for its  
13 practices, alarm bells should go off for everyone. Under these circumstances, Level 3  
14 urges the Commission to adopt the following condition: "The Combined Entity agrees  
15 that it will limit any tandem transport charges for 8YY traffic to charges based upon the  
16 nearest tandem identified in the Local Exchange Routing Guide to the originating point  
17 of the call."

18 **VI. THE COMMISSION SHOULD RESOLVE OUTSTANDING ISSUES WITH THE**  
19 **TREATMENT OF ISP-BOUND TRAFFIC.**  
20

21 **Q. WHY DOES THE ISSUE OF ISP-BOUND TRAFFIC BEAR ON THIS**  
22 **PROCEEDING?**  
23

24 A. At its most fundamental, the treatment of ISP-bound traffic goes to the public interest  
25 because it involves how one class of consumers will obtain or maintain access to the  
26 Internet. That issue is crucial because the both Qwest and CenturyLink have cited as a

1 benefit in their testimony here and before the FCC that these transactions will lead to  
2 increased broadband deployment and the introduction of IPTV.<sup>11</sup> I don't see how you can  
3 focus on broadband deployment without taking steps to ensure that consumers have low  
4 cost access to the Internet in the interim.

5 **Q. DID THE UTILITY DIVISION PROVIDE TESTIMONY ON THIS ISSUE?**

6  
7 **A.** Yes. Mr. Fimbres testifies that, "Staff has recommended several wholesale conditions  
8 designed to end ongoing disputes between Qwest and CLECs. It is important to  
9 eliminate time-consuming litigation where this can be done. This is particularly true  
10 where CenturyLink or Embarq's position on the issue may be an acceptable resolution or  
11 where resolution has been reached in other Qwest states but litigation continues in  
12 Arizona."<sup>12</sup> Attachment 1 of Mr. Fimbres's testimony then recommends approval of the  
13 following two conditions:

14 Condition 31. Merged Company shall offer an amendment to ICAs which provides for  
15 compensation for all ISP-bound traffic (including VNXX traffic) at the rate of \$.0004 per  
16 minute. This is consistent with a provision contained in Embarq's (a subsidiary of  
17 CenturyLink) ICA with Level 3. The amendment shall only be available to carriers to the  
18 extent they agree to resolve any pending disputes before the Commission based upon the  
19 same terms and conditions.

20  
21 Condition 47. The Merged Company shall evaluate existing litigation involving the  
22 Commission and make a good faith effort to resolve the issues without further litigation.  
23 Following are cases which have entailed significant Commission resources which the  
24 Merged Company should include in its evaluation: ... (c) Pac-West/Level 3 VNXX

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<sup>11</sup> Ex Parte filing, In Re: Applications filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent of Transfer of Control, Federal Communications Commission, WC Docket No. 10-11-, filed Sept. 16, 2010. "During the meeting, CenturyLink and Qwest discussed the extensive public interest benefits of the transaction for consumers, including expanding IPTV opportunities, creating a stronger service provider to the enterprise market, improving the financial strength of the combined company, and expanding broadband services available to consumers consistent with the Commission's goals in the National Broadband Plan.

<sup>12</sup> Fimbres Direct at page 18, lines 7-14.

1 Remand Proceeding ACC (Docket Nos. T-01051B-05-0495, T-03693A-0495, T-01051B-  
2 05-0415, T-036564A-05-0415).  
3

4 **Q. HOW DO YOU RESPOND TO MR. FIMBRES' TESTIMONY AND THE**  
5 **PROPOSED CONDITIONS CONTAINED IN ATTACHMENT 1?**  
6

7 A. Level 3 agrees with the purpose of Mr. Fimbres' testimony – the settlement of the so-  
8 called ISP-bound VNXX dispute. However, the rate proposed by Mr. Fimbres fails to  
9 take into account the rate that Level 3 is entitled to under the law or the fact that in a  
10 declining market for dial-up traffic the rate proposed by Mr. Fimbres could make the  
11 continuation of the provisions of dial-up ISP services in Arizona financially infeasible.  
12 As I testified in my Direct Testimony, this is the most litigated issue Level 3 has  
13 experienced in the Qwest service territory for the past 10 years. The Commission should  
14 take advantage of the unique opportunity presented by the merger application and put an  
15 end to endless litigation.

16 **Q. IS RESOLUTION OF THIS ISSUE IN THE PUBLIC INTEREST?**

17 A. Yes. First, the treatment of ISP-bound traffic and the classification of how that traffic is  
18 treated for assessing relative use charges go to the heart of the finances of the Combined  
19 Entity entity. That is especially true when regulators consider how the Combined Entity  
20 will pay for or meet its broadband commitments. It is important for regulators to  
21 understand the economic assumptions the Combined Entity has made with respect to it  
22 intercarrier compensation obligations. Does the Combined Entity treat ISP-bound traffic  
23 as income from access charges or a network expense for terminating compensation? In  
24 addition, is the Combined Entity counting on revenue collected for relative use charges  
25 that related to ISP-bound traffic. These are important questions that the Commission  
26 needs to consider as it evaluates whether this transaction meets the public interest. If the

1 Combined Entity is relying upon traffic classifications or other assumptions to fund its  
2 broadband or IPTV efforts, then the Commission must consider the ability of the  
3 Combined Entity to rely upon those revenue sources.

4 The economics of the dial-up Internet access business have changed since the FCC took  
5 its initial steps to rein in what it saw as problems in the market for dialup ISP services.<sup>13</sup>

6 After its initial determination, the FCC found that the arbitrage opportunities were  
7 eliminated when it lifted the minute and new market caps.<sup>14</sup> As more Americans  
8 transition to broadband services, the ISP dial -up market continues to shrink but remains  
9 an important means of accessing the Internet for those areas with no or low broadband  
10 penetration, for those who cannot afford broadband services and those who do not wish  
11 to adopt broadband. In today's marketplace, the reality is that the costs imposed by Qwest  
12 for relative use charges, and its constant fight against its obligation to pay reciprocal  
13 compensation rates for ISP-bound traffic, have made it largely uneconomical for carriers  
14 to provide wholesale dialup services. By bringing the regulatory regime into line with the  
15 state of the law, the Commission will ensure that those who prefer or cannot obtain dialup  
16 services have competitive choices. It is what the public interest requires.

17 Since the Joint Petitioners are asserting their ability to encourage economically efficient  
18 deployment of infrastructure for high-speed telecommunications services and greater  
19 capacity for voice, video and data transmission, the Commission and the industry must

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<sup>13</sup> *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Developing a Unified Intercarrier Compensation Regime, Intercarrier Compensation for ISP-Bound Traffic*, FCC 08-262, 24 FCC Rcd 6475 (2008) (the ISP Order).

<sup>14</sup> *Core Communications Inc. v. Federal Communications Commission, et al*; 592 F.3d 139, decided Jan. 12, 2010. ("Core Mandamus Order")



1 examine the ability of the Combined Entity to do so. Understanding how the Combined  
2 Entity plans to pay for its commitments to deliver this infrastructure, and how the  
3 Combined Entity plans to treat and classify ISP-bound traffic, is a crucial part of that  
4 analysis and part of the public interest test.

5 **Q. DID QWEST OR CENTURYLINK RESPOND TO THE FINANCIAL OR**  
6 **PUBLIC INTEREST ISSUES RAISED IN YOUR TESTIMONY?**

7  
8 A. No they did not. Their witnesses did not address what financial assumptions they were  
9 making with respect to ISP-bound traffic and Relative Use Charges. Instead, it appears  
10 that Qwest witness Karen Stewart was designated to take the lead on the response, but  
11 she did so on legal grounds.

12 **Q. DOES LEVEL 3 AGREE WITH THE ANALYSIS THAT MS. STEWART**  
13 **PROVIDES IN HER REBUTTAL TESTIMONY?**<sup>15</sup>

14 A No, Level 3 does not. We'll provide more legal guidance in our briefs and other post-  
15 hearing submissions. However, I would say that Stewart's reliance on the "ISP Order" is  
16 incorrect. That order has been superseded by the action taken by the FCC in the ISP  
17 Remand Order and the subsequent action by the D.C. Circuit Court of Appeals in the  
18 Core Mandamus Order. Those decisions have replaced the underlying legal rationale of  
19 the original ISP Order with a coherent legal structure that leaves no room for the type of  
20 creative regulatory lawyering that Qwest has pursued for the past five years. Under those  
21 decisions, ISP-bound traffic is classified as telecommunications traffic subject to the  
22 reciprocal compensation requirements of Section 251(b)(5) of the Telecommunications  
23 Act. However because of the interstate nature of that traffic, the FCC determined that it  
24 could set the rate for that traffic under its authority over interstate traffic in Section 201 of

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<sup>15</sup> Stewart Rebuttal at p. 40.

1 the Communications Act. Since locally dialed ISP-bound traffic falls under Section  
2 251(b)(5), the rules Part 51 rule apply and they prohibit one carrier from assessing  
3 charges on traffic that originates on the network of another carrier. That alone prohibits  
4 the Combined Entity from excluding ISP-bound traffic when assessing relative use  
5 charges against an interconnecting carrier.

6 **VII. THE COMMISSION SHOULD REQUIRE THE COMBINED ENTITY TO**  
7 **MAINTAIN THE QWEST STATEMENT OF GENERALLY AVAILABLE**  
8 **TERMS (SGATS) FOR UP TO FIVE YEARS.**

9 **Q. IN THE STEWART REBUTTAL, QWEST ARGUES THAT THE LAW DOES**  
10 **NOT REQUIRE IT TO MAINTAIN ITS SGAT? HOW DOES LEVEL 3**  
11 **RESPOND?**

12 **A.** Level 3 will respond to the legal analysis of Ms. Stewart in its post-hearing briefs.  
13 However, from a policy perspective Level 3 disagrees with much of her testimony.

14 **Q. PLEASE EXPLAIN.**

15 **A.** As a threshold matter, Level 3 does not believe that Qwest can withdraw its SGAT  
16 without the approval of the Commission. Despite Qwest's view that it is not required to  
17 maintain the SGAT, a number of state commissions have had to weigh in on Qwest's  
18 attempts to withdraw it.<sup>16</sup> Qwest cites Idaho as one state where they have been allowed to  
19 withdraw the SGAT but even that discussion shows that an order was required from that  
20 state regulatory authority. Based on my research, I do not believe that this Commission  
21 has allowed Qwest to withdraw its SGAT or to just ignore its implementation.

22 **Q. WHY SHOULD QWEST BE REQUIRED TO MAINTAIN THE SGAT?**

23 **A.** Qwest should be required to maintain the SGAT because it would be in public interest.  
24 Having an available set of terms and conditions can allow a carrier the ability to avoid the

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<sup>16</sup> Stewart Rebuttal at pages 34 to 37.

1 extended costs and transactional delays involved in negotiating an interconnection  
2 agreement. This is especially true when there are no available interconnection agreements  
3 to adopt. As I mentioned in my original testimony, Level 3's agreement with Qwest has  
4 been in evergreen status for a number of years. That makes it unavailable to other  
5 carriers. The SGAT provides a quick roadmap for new entrants to bring their competitive  
6 services to the marketplace. As I discussed earlier, preserving a competitive market for  
7 telecommunications is one of the factors state law requires the Commission to consider as  
8 it evaluates this proposed transaction.

9 Utility Division witness Fimbres recognizes the importance of the SGAT, testifying that  
10 the parties in the 271 proceeding spent considerable time and effort working on the terms  
11 and conditions of the SGAT.<sup>17</sup> Mr. Fimbres also testifies that the SGAT was developed  
12 in a *collaborative process* in which the CLECs participated.<sup>18</sup> Unlike the SGAT, the  
13 Qwest "template"<sup>19</sup> reflects Qwest's positions on issues and CLECs were not invited in to  
14 comment on included language. Mr. Fimbres also testifies that the Commission's 271  
15 order remains in effect.<sup>20</sup>

#### 16 VIII. SUMMARY OF TESTIMONY AND RECOMMENDATIONS

17 **Q. CAN YOU PLEASE SUMMARIZE YOUR REBUTTAL TESTIMONY.**

18 A. Yes. Level 3 agrees with the staff of the Utilities Division of the Arizona Corporation  
19 Commission in that the Joint Petitioners have failed to provide adequate information for

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<sup>17</sup> Fimbres Direct at page 13, lines 9-14.

<sup>18</sup> Id.

<sup>19</sup> Stewart Rebuttal at page 36, lines 7-9.

<sup>20</sup> Fimbres Direct at page 12, line 3.

1 the Commission and the telecommunications industry as a whole to evaluate whether this  
2 transaction complies with the public interest. Absent a thorough review of the finances of  
3 the Companies and the assumptions underlying their projections, the Commission cannot  
4 confidently make a credible determination as to the ability of the Combined Entity to  
5 meet its post closing obligations. Those projections are crucial because they go to the  
6 ability of the Combined Entity to meet all of its obligations. As a competitor of Qwest  
7 and CenturyLink, in the absence of any ability to understand the financial arrangements  
8 that will govern the RBOC's relationship with the CLECs, Level 3's main concern is that  
9 the Combined Entity be able to meet its contractual obligations to provide  
10 interconnection services or , to provide operational support systems. Yet, when asked to  
11 answer the most basic questions regarding those assumptions, Qwest and CenturyLink  
12 obfuscate, avoid and ignore. That type of conduct raises red flags.

13 Compounding the problem is the long-term negative impacts on competition that will  
14 follow if the Combined Entity stumbles. As much as they would prefer to brush aside the  
15 problems of Hawaiian Telephone and Fairpoint Communications, the Combined Entity  
16 has a duty to ensure that it meets its obligations. It's hard to understand why Qwest and  
17 CenturyLink believe that they can dismiss industry questions and concerns as  
18 "speculation" while at the same time offering nothing more than "speculation" about the  
19 conduct of the Combined Entity.

20 If the Combined Entity stumbles, the impact will be felt throughout the  
21 telecommunications industry and competition will suffer just as it has in Hawaii, Maine,  
22 New Hampshire and Vermont. If financial projections are not met, then regulators must

1 understand what will happen to the employees of the Combined Entity and which parts of  
2 the Combined Entity will be targeted for restructuring or reduction. For example, will the  
3 Combined Entity lay off employees in wholesale services in order to focus their efforts  
4 on broadband deployment?

5 The results of such behavior would be profound. Without vibrant competitive pressure,  
6 the Combined Entity will lack the market pressure to deploy broadband Internet access as  
7 soon as possible. Further, the Combined Entity will lack the incentive to provide  
8 innovative, price appealing services. And finally, the Combined Entity will have every  
9 incentive to reduce its workforce that it deems unnecessary in the face of diminished  
10 competition. The ripple effect on employment throughout the telecommunications  
11 industry will be devastating.

12 **Q. CAN YOU PLEASE SUMMARIZE LEVEL 3's RECOMMENDATION TO THE**  
13 **COMMISSION.**

14 **A.** In my initial testimony, Level 3 stated that this transaction could be approved if the  
15 Commission adopted targeted, common-sense conditions. Nothing the Joint Petitioners  
16 has submitted so far has changed the Company's position. Those conditions include:

- 17 1. Extending the time period of existing interconnection agreements;
- 18 2. Requiring the Combined Entity to allow the portability from one state to  
19 another any existing interconnection agreement between the Combined  
20 Entity and that CLEC;
- 21 3. Requiring Qwest to extend its existing Statements of Generally Agreeable  
22 Terms and Conditions ("SGATs") for a period of five years;
- 23 4. Requiring the Combined Entity to compensate terminating carriers at the  
24 appropriate rate for ISP-bound traffic and that ISP-bound traffic shall  
25 include traffic provisioned using virtual NXX codes;

- 1 5. Ensuring that the Combined Entity treats all locally dialed ISP-bound  
2 traffic including virtual NXX traffic as local traffic in the calculation of  
3 relative use factors pursuant to 47 C.F.R §703(b);
- 4 6. Requiring the Combined Entity to allow carriers to use new or expanded  
5 interconnection routes established by affiliates of the Combined Entity  
6 that are in adjoining service territories;
- 7 7. Requiring all contracts between the affiliates of the Combined Entity for  
8 telecommunications services and network interconnection to be made  
9 publicly available;
- 10 8. Prohibiting the Combined Entity from using billing disputes with one  
11 entity from threatening disconnection, disconnecting or refusing to  
12 provision new orders across the Combined Entity;
- 13 9. Prohibiting the Combined Entities from continuing or expanding the  
14 improper homing of 8YY switched access charge and transport practices;
- 15 10. Requiring Qwest to cease its unlawful and arbitrary practice of denying  
16 dispute claims solely on the basis that they are more than 90 days beyond  
17 the date originally billed; and
- 18 11. Requiring Qwest to cease its practice of using its interstate tariffs as a  
19 claimed basis for establishing billing analogs for intrastate charges that are  
20 not in its intrastate tariffs.

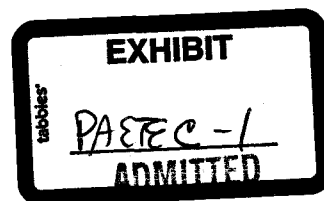
21 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

22 **A.** Yes it does.

BEFORE THE ARIZONA CORPORATION COMMISSION

**COMMISSIONERS**

KRISTIN K. MAYES - CHAIRMAN  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP



IN THE MATTER OF THE JOINT NOTICE AND APPLICATION OF QWEST CORPORATION,	)	DOCKET NOS. T-01051B-10-0194
QWEST COMMUNICATIONS COMPANY, LLC,	)	T-02811B-10-0194
QWEST LD CORP., EMBARQ	)	T-04190A-10-0194
COMMUNICATIONS, INC. D/B/A CENTURY	)	T-20443A-10-0194
LINK COMMUNICATIONS, EMBARQ	)	T-03555A-10-0194
PAYPHONE SERVICES, INC. D/B/A	)	T-03902A-10-0194
CENTURYLINK, AND CENTURYTEL	)	
SOLUTIONS, LLC FOR APPROVAL OF THE	)	
PROPOSED MERGER OF THEIR PARENT	)	
CORPORATIONS QWEST COMMUNICATIONS	)	
INTERNATIONAL INC. AND CENTURYTEL,	)	
INC.	)	

**TESTIMONY**

**OF**

**WILLIAM A. HAAS**

**ON BEHALF OF PAETEC BUSINESS SERVICES**

**REGARDING**

**JOINT APPLICANTS/STAFF/RUCO**

**SETTLEMENT AGREEMENT**

**DECEMBER 8, 2010**

**PUBLIC VERSION**

1 **Q. Please state your name and employment position.**

2 A. A. My name is William Haas and I am employed by PAETEC Holding Corp., which is  
3 the ultimate parent company of McLeodUSA Telecommunications Services, Inc. d/b/a  
4 PAETEC Business Services. I am Corporate Vice President of Public Policy and  
5 Regulatory. I will refer hereinafter to my employer as either PAETEC or McLeodUSA.

6  
7 **Q. What is the purpose of your testimony regarding the Joint Applicant/Staff/RUCO  
8 settlement agreement ("Settlement Agreement")?**

9 A. My testimony will: (i) describe PAETEC's operations and how it currently interconnects  
10 with Qwest; (ii) address certain wholesale conditions set forth in the Settlement Agreement  
11 and explain why the conditions are insufficient to meet PAETEC's concerns about the  
12 proposed merger and its impact on the Merged Company's wholesale operations; and (iii)  
13 identify specific additional merger conditions that PAETEC believes are necessary for the  
14 public interest, particularly to ensure continuing robust competition in Arizona.

15  
16 My testimony focuses on PAETEC-specific concerns and complements the testimony  
17 being submitted by Timothy Gates on behalf of several CLECs regarding the Settlement  
18 Agreement. In addition to the concerns discussed by Mr. Gates, PAETEC's primary  
19 concerns with the Settlement Agreement wholesale conditions is that they are based on an  
20 Integra Telecom-specific agreement, which was designed to meet Integra's specific  
21 business model, operations and network and its related concerns about the merger. It  
22 appears that PAETEC may have a different business model than Integra. In addition, there  
23 is a difference in the manner in which PAETEC's back office systems connect to and  
24 interact with the Qwest OSS and underlying databases. As a result, PAETEC has different  
25 concerns about the impact of merger.



1 From PAETEC's perspective, any approval of the proposed merger should ensure that the  
2 Merged Company's OSS continue to allow the same functionality for PAETEC's back  
3 office operations to ensure a continued high level of customer service and support for 36  
4 months after merger closing. PAETEC also needs to ensure stability in its operations  
5 through the continuation of contractual commitments during the post-merger transition,  
6 which Joint Applicants have indicated may last for three or more years. At a minimum,  
7 commercial and wholesale agreements should be extended the same amount of time  
8 beyond the merger close as interconnection agreements -- 36 months -- in order to maintain  
9 a level playing field for all competitors.

10  
11 **Q. Please describe PAETEC.**

12 **A.** PAETEC is a competitive local exchange carrier ("CLEC") certified by numerous states,  
13 including the Arizona Corporation Commission ("Commission") to provide  
14 telecommunications service, including local exchange service, throughout Qwest's service  
15 area in Minnesota. PAETEC has been providing local exchange services as a certified  
16 CLEC in Arizona since 2000. We provide services in Arizona primarily to small and  
17 medium size business customers while also providing local exchange services to a small  
18 number of residential customers. We also provide local telecommunications services  
19 throughout the entire Qwest region. PAETEC currently serves [BEGIN HIGHLY  
20 CONFIDENTIAL INFORMATION [REDACTED] END HIGHLY CONFIDENTIAL  
21 INFORMATION] customers in Arizona, including approximately [BEGIN HIGHLY  
22 CONFIDENTIAL INFORMATION [REDACTED] END HIGHLY CONFIDENTIAL  
23 INFORMATION] business customers and [BEGIN HIGHLY CONFIDENTIAL  
24 INFORMATION [REDACTED] END HIGHLY CONFIDENTIAL INFORMATION] residential  
25 customers. To serve the majority of its lines in Arizona, PAETEC uses its own local  
26 switching facilities in combination with last mile loops (high capacity circuits (UNE T1 or  
27

1 Special Access circuits) and UNE POTs loops)) and transport leased almost exclusively  
2 from Qwest. PAETEC also purchases the Qwest commercial UNE-P platform under its  
3 Qwest's Commercial Local Service Platform ("QLSP") Agreement to serve [BEGIN  
4 CONFIDENTIAL INFORMATION [REDACTED] END HIGHLY CONFIDENTIAL  
5 INFORMATION] of these Arizona customers.  
6

7 **Q. How does PAETEC interact with the Qwest OSS?**

8 A. PAETEC uses an EDI interface to electronically-bond with various Qwest OSS, including  
9 Interconnected Media Access ("IMA-XML"), Directory Inquiry Listing System ("DLIS"),  
10 Electronic Bonded Trouble Administration ("EBTA") as distinguished from the  
11 MEDIACC-EBTA GUI, Centrex Management System (CMS), and E-Bonded ASRs.  
12 Also, PAETEC has established direct interfaces that are web-based application to  
13 application for Customer Electronic Maintenance and Repair ("CEMR"), Q-Pricer, Qwest  
14 Control ("Q-Control"), Online Dispute Management ("ODM"). As back-up, PAETEC  
15 uses web-based GUIs including, but not limited to Qwest Online Request Application  
16 (QORA) Access Service Requests (ASRs).  
17

18 **Q. Please explain why PAETEC developed such a sophisticated interface with Qwest.**

19 A. After Qwest secured its 271 approval, PAETEC developed and implemented system  
20 enhancements in its own back office systems to automate several pre-order, order, billing  
21 and trouble ticket management functions over the course of several years. A conservative  
22 estimate of PAETEC's investment in system enhancements to automate various internal  
23 functions to most efficiently use the capabilities enabled by e-bonding with various ILEC  
24 OSS systems is over [BEGIN HIGHLY CONFIDENTIAL INFORMATION [REDACTED]  
25 [REDACTED] END HIGHLY CONFIDENTIAL INFORMATION].  
26  
27

PAETEC's development and implementation of its back office system enhancements, some of which were detailed in the ex parte letter filed by PAETEC with the FCC on October 22, 2010, enabled PAETEC to automate a number of processes that were previously completed using manual labor, including but not limited to:

- a. identifying products and services that PAETEC can sell at a prospect's current location(s);
- b. verifying what services a customer currently purchases from Qwest;
- c. verifying that a customer location is suitable for particular services;
- d. verifying a customer's address in a format that matches Qwest records for proper order preparation and automatically populating an appropriate electronic order form with the correct address, associated CLLI and various network identifiers;
- e. scheduling a PAETEC technician to install service on the appropriate date when the ILEC makes the circuit available to PAETEC to provide service to an end user based on the FOC provided;
- f. cross-referencing and synching customer premise addresses in Qwest exchanges to LERG data to associate the address with the correct CLLI, rate center and PSAP to submit orders with proper ANCAs and SPIDs with minimal risk of error;
- g. populating a variety of PAETEC systems such as billing and customer service records with detailed customer proprietary network information provided on a CSR;
- h. terminating end user billing after receipt of line loss notification from Qwest.

A copy of PAETEC's October 22, 2010 Ex Parte letter to the FCC discussing these issues is attached as Exhibit WAH-1.

**Q. Are there operational benefits to these automated processes?**

A. The implementation of these automated processes enabled PAETEC to reallocate a significant number of employees [BEGIN HIGHLY CONFIDENTIAL INFORMATION REDACTED END HIGHLY CONFIDENTIAL INFORMATION] to their assignments or functions. Moreover, the automated processes provide more timely ordering, provisioning, repairs and other service for our customers.

1 **Q. Why is it important to maintain the current level of functionality of the Qwest OSS?**

2 A. PAETEC's ability to continue using its own back office system automation is dependent on  
3 continued access to an e-bonded interfaces that allows information to flow from the ILEC  
4 systems and back office databases directly into the PAETEC back office systems via the e-  
5 bonding into the PAETEC systems, and vice versa.

6  
7 PAETEC believes that the current version of CenturyLink's OSS (the former Embarq's  
8 EASE OSS) is simply insufficient to maintain the current level of functionality of the  
9 Qwest OSS. Yet CenturyLink has suggested that it might scrap the Qwest OSS and  
10 migrate all Qwest states to EASE.

11  
12 PAETEC has conducted a comparative assessment of the Qwest OSS and the EASE OSS  
13 and the EASE OSS is far inferior. Attached as Exhibit WAH-2 is a detailed schedule  
14 denoting the functionalities of the Qwest OSS used by PAETEC today, and the comparable  
15 functionalities (or lack thereof) offered by EASE today. The PAETEC employees that  
16 created the comparative schedule verified the information regarding EASE  
17 functionalities/capabilities set forth in Exhibit 2 with an employee of a the third party  
18 service bureau that is e-bonded with EASE to submit orders on behalf of PAETEC to  
19 assure that this schedule accurately details the functionality of EASE using e-bonding  
20 capabilities for submitting LSRs.

21  
22 There are many areas in which EASE is inferior to the Qwest OSS, and areas where it is  
23 clear that EASE is not 271 compliant. For example, Qwest IMA provides real time order  
24 processing, whereas EASE does not. EASE offers only "batch" order processing even  
25 when e-bonded, which is not real time order processing. With respect to pre-order  
26 functions, the Qwest IMA allows address validation using various means using drop  
27

1 menus. EASE requires a CLEC to input the address exactly as it appears in the EASE  
2 system to get a match. Thus, if the customer does not provide its address as recorded in  
3 EASE, the CLEC will be unable to validate the customer's address. Additionally, the  
4 Qwest IMA saves the validated address so that it can automatically populate an LSR with  
5 the validated address. EASE offers no such functionality. EASE also does not allow a  
6 CLEC to electronically access to CenturyLink's Customer Service Records whereas the  
7 Qwest IMA does offer this functionality. Thus, while the Qwest OSS allows PAETEC to  
8 download CSR information directly into its back offices system for use in sales, order  
9 preparation, and establishing a customer's account in its various systems, EASE offers no  
10 such functionality. Finally, the Qwest IMA also enables a CLEC to confirm on a pre-order  
11 basis that certain services and products are able to be offered at a prospect's address. In  
12 EASE, "service availability" is only ascertained *after* a CLEC has submitted an actual  
13 order. The lack of any pre-order functions in EASE means a CLEC is forced to incur the  
14 cost and time of submitting an actual order only to potentially learn that the CLEC cannot  
15 serve the customer's location. Providing CLECs Pre-order OSS is a 271 requirement that  
16 does not exist in EASE today.

17  
18 **Q. What provision of the Settlement Agreement addresses OSS issues?**

19 **A.** Condition 19, which provides, generally, that the Merged Company will use Qwest's OSS  
20 for at least two years, or until July 1, 2013, whichever is later, and "thereafter provide a  
21 level of wholesale service quality that is not less than that provided by Qwest prior to the  
22 Closing Date, with functionally equivalent support, data, functionality, performance,  
23 electronic flow through, and electronic bonding." Condition 19 also contains certain  
24 requirements regarding transition planning prior to replacing or integrating Qwest OSS  
25 systems.  
26  
27

1 Q. What is your understanding of the origin of the language that is contained in  
2 Condition 19 of the Settlement Agreement?

3 A. The language of Condition 19 is virtually identical to language contained in Paragraph 12  
4 of the settlement agreement previously entered into between Joint Applicants and Integra.  
5

6 Q. Should the Commission consider Integra's agreement to this language as evidence  
7 that Condition 19 adequately addresses the OSS issues?

8 A. No. The Integra settlement agreement expressly states that that agreement was adequate  
9 from Integra's perspective.<sup>1</sup> Integra has not developed and implemented comparable back  
10 office automation that PAETEC has and, therefore, its own operations would not be  
11 impacted in the same manner were the Merged Entity to migrate to EASE. Instead, Integra  
12 uses manual processes to complete various steps in pre-order, ordering, trouble ticket  
13 management and billing that PAETEC has automated. Integra's reliance on manual  
14 processes means that future changes to the Merged Company OSS, should those changes  
15 degrade the functionality, access and robustness of the e-bonding capabilities, will not  
16 impact Integra to the degree that such changes could impact the automated processes used  
17 by PAETEC.  
18

19 The Settlement Agreement does make certain modifications to the language of the Integra  
20 settlement agreement. In particular, the Settlement Agreement requires that the Merged  
21 Company provide wholesale service quality that is "not less than" that provided by Qwest  
22 prior to the closing date, while the Integra settlement agreement only requires wholesale  
23 service quality that is "not *materially* less" than that provided by Qwest prior to the closing  
24 date. Additionally, the Settlement Agreement provides that the Merged Company will  
25

---

26 <sup>1</sup> See Integra Settlement Agreement, Preamble (fifth whereas clause), Paragraph C.  
27

1 provide support, data, functionality, performance, electronic flow through, and electronic  
2 bonding that is "functionally equivalent" to that provided prior to the merger. The Integra  
3 settlement does not include the phrase "functionally equivalent." I understand that  
4 Commission Staff may believe that its required modification to this condition addresses  
5 PAETEC's concern. However, although these modifications do represent a step in the  
6 right direction, I am still concerned that the condition remains ambiguous and will lead to  
7 litigation in the future if CenturyLink begins to migrate from the Qwest OSS to the EASE  
8 OSS.

9  
10 Moreover, as discussed in more detail below, I also believe that Condition 19 should  
11 require that the Qwest OSS system should be available for *three* years after merger closing  
12 or July 1, 2014, whichever is later.

13  
14 **Q. Could you describe the potential costs to PAETEC if CenturyLink migrates to the**  
15 **less robust EASE OSS?**

16 Let me give you a key example of what PAETEC could be facing. Degrading the e-  
17 bonding functionality for just one automated function that PAETEC uses today, which  
18 today does not exist in EASE or other CenturyLink OSS -- trouble ticket management for  
19 T1 circuits -- could increase PAETEC's annual operating costs by nearly [BEGIN  
20 **HIGHLY CONFIDENTIAL INFORMATION** [REDACTED] **END HIGHLY**  
21 **CONFIDENTIAL INFORMATION]** due to the necessity to assign employees to  
22 manually perform tasks done in an automated fashion today. I would note that since  
23 Integra performs this function manually today, the loss of that functionality should have no  
24 comparable impact on Integra's operations. Likewise, degrading the e-bonding  
25 functionality for trouble ticket management for basic telephone services could increase  
26 PAETEC's annual operating costs by another [BEGIN **HIGHLY CONFIDENTIAL**

1 INFORMATION [REDACTED] END HIGHLY CONFIDENTIAL INFORMATION] due  
2 to the necessity to assign employees to manually perform tasks done in an automated  
3 fashion today.

4  
5 Thus, modifying or changing existing Qwest OSS will be significantly more impactful on  
6 PAETEC, and thus, retention on the Qwest OSS for at least 36 months is more critical to  
7 PAETEC than it would be to Integra. It is also more critical for PAETEC than Integra that  
8 there be third-party testing at commercial volumes as part of any transition to a new OSS to  
9 make sure that there is no decline in OSS functionality, particularly for a CLEC such as  
10 PAETEC that has fully developed/automated back-office systems integrated in with the  
11 current Qwest OSS.

12  
13 This is why Condition 19 of the Settlement Agreement is inadequate for PAETEC, even  
14 though it may have been sufficient for a certain other CLEC with a different business plan  
15 and different operations.

16  
17 **Q. Do you have proposed revisions to Condition 19 that would meet your concerns?**

18 **A.** Yes. the first paragraph of Condition 19 should be revised to read as follows:

19  
20 "19. In Qwest ILEC service territory, after the Closing Date, the Merged  
21 Company will use and offer to wholesale customers the legacy Qwest  
22 Operational Support Systems ("OSS") for at least three years, or until July  
23 1, 2014, whichever is later, and thereafter provide a level of wholesale  
24 service quality that is not less than that provided by Qwest prior to the  
25 closing Date, with functionally equivalent support, data, functionality  
26 (including functionality affecting the operations of CLEC back office



1 functionality as of the Closing Date), performance, electronic flow through  
2 and electric bonding. After the period noted above, the Merged company  
3 will not replace or integrate Qwest systems without first establishing a  
4 detailed transition plan and complying with the following procedures.”

5  
6 **Q: You noted previously that the proposed settlement language requiring that the new**  
7 **OSS be “functionally equivalent” does not adequately address PAETEC’s concerns.**  
8 **Why is that language not adequate from your perspective?**

9 **A:** Based on the advocacy of the Joint Applicants to date, it is already apparent that what the  
10 Applicants view as comparable functionality to the Qwest OSS is distinctly different from  
11 what PAETEC views as comparable functionality. For example, in its reply comments  
12 filed in August, the Applicants argued that the Joint CLECs had made “false” claims that  
13 EASE processed orders slower than Qwest OSS. Applicants contended that EASE  
14 processed orders in “near real time.” The fact of the matter is that unlike the Qwest OSS  
15 that provides flow through of orders, EASE does not have flow through order processing.  
16 Instead, EASE uses batch processing, which for PAETEC occurs every 20 minutes. Yet,  
17 per the Applicant’s reply comments, CenturyLink apparently believes that batch processing  
18 of orders is comparable to flow through order processing. If Applicants are willing to  
19 represent that EASE is comparably functional to the Qwest OSS today, one must assume  
20 that the Merged Entity will make similar claims whenever it seeks to migrate away from  
21 the Qwest OSS in the future. Thus, this language is merely delaying the inevitable debate  
22 as to what is comparable functionality to the Qwest OSS.

1 Q. Do you also believe that Condition 23 is inadequate to provide stability for  
2 PAETEC's business operations?

3 A. Yes. Although Condition 23 provides that Interconnection Agreements ("ICAs") will be  
4 extended for 36 months after merger close, it only extends "commercial agreements" and  
5 "wholesale agreements" for eighteen months after closing. I believe that both of those  
6 types of agreements also should be extended 36 months to provide stability post-merger  
7 and to provide a level playing field for all competitors. Again, this condition is based on  
8 an Integra settlement condition and reflects Integra-specific needs, not that of many other  
9 CLECs including PAETEC.

10

11 Therefore, I urge the Commission to modify Condition 23 so that both Commercial  
12 Agreements and Wholesale Agreements are extended 36 months beyond the closing date –  
13 to parallel the ICA extension.

14

15 Q. Does this conclude your testimony?

16 A. Yes.

17

18

19

20

21

22

23

24

25

26

27

EXHIBIT

WAH-1

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October 22, 2010

**VIA ELECTRONIC FILING**

**EX PARTE**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

Re: Applications Filed by Qwest Communications International  
Inc. and CenturyTel, Inc., d/b/a CenturyLink for Consent to  
Transfer of Control, WC Docket No. 10-110

Dear Ms. Dortch:

PAETEC Holding Corp., on behalf of its operating subsidiaries, PAETEC Communications, Inc., US LEC, and McLeodUSA Telecommunications Services, L.L.C. (collectively "PAETEC"), submits this letter to address arguments raised in reply comments and ex parte filings by CenturyLink, Inc. and Qwest Communications International Inc. (collectively "Applicants"). On July 12, 2010, PAETEC filed Comments in this Docket jointly with 11 other CLECs ("Joint Commenter Comments"). Applicants filed a reply on July 27, 2010 (Applicants' Reply Comments) and have filed several ex partes since then. This letter will supplement the Joint Commenter Comments, will respond to Applicants' Reply Comments and ex partes, and will address matters raised in ex partes by other parties.

**I. Introduction**

The record of this proceeding, while incomplete, shows that the proposed merger of large national incumbent LECs, one of which is comprised of BOCs subject to Section 271, will not serve the public interest absent substantial conditions. The merger will result in structural injury because it will eliminate actual and potential competition between CenturyLink and Qwest, generate a Merged Company with an larger "footprint" that has increased ability and incentive to discriminate against its competitor-customers such as PAETEC, and will eliminate important benchmarks that the FCC and state commissions can use to evaluate Applicants' compliance with the pro-competitive conditions of the Telecommunications Act of 1996.

Although substantial conditions are required both to minimize and to offset the harm to competition that will result from the merger, Applicants have not offered a single condition, only a commitment in Reply Comments that they

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will not change their OSS for the first year after the merger. This is giving away the proverbial "sleeves off their vest," since Applicants admit the matter has to be studied, and CenturyLink is still busy integrating the OSS of Embarq and CenturyTel.

Instead, Applicants have resisted the imposition of numerous conditions that have been imposed in many or all other mergers involving BOCs and of this many or more access lines. Their claims that everything will work smoothly and that no competitor will be competitively disadvantaged by the merger are hollow, in light of the dismal experience of other recent mergers, in each of which the applicants made similar promises.

## **II. Injury to Competition**

Injury to competition will result from the merger of both a structural nature and a merger-specific nature. The former is the simple result of the merger of two large carriers, with partially overlapping and heavily adjacent territories. The latter results from aspects of the merger peculiar to the attributes of the Applicants, such as CenturyLink's apparent intent to replace Qwest's OSS with its own.

### **A. Structural Injury to Competition**

Applicants misconstrue the Joint Commenter Comments regarding industry to competition that will result from the approval of the merger. Joint Commenters cited the Commission's "big footprint" and "loss of benchmarks" theories as justifying conditions that will offset the competitive harm resulting from the merger, not as a basis for denying approval of the merger entirely.<sup>1</sup> Yet Applicants argue that these are not reasons to deny approval entirely,<sup>2</sup> thereby knocking down a "straw man" argument that Joint Commenters and others never made.

As to the Commission's "big footprint" theory, Applicants assert that the Commission has "repeatedly rejected attempts to hold up" mergers based on this theory, citing the Commission's *AT&T/BellSouth Order*.<sup>3</sup> In that very order,

<sup>1</sup> Joint Commenter Comments, filed July 12, 2010, at 23-31

<sup>2</sup> Applicants' Reply Comments at 15-19.

<sup>3</sup> Applicants' Reply Comments at 16.

however, the Commission imposed numerous conditions sought by PAETEC and others that Applicants resist here. Applicants do not explain why the *AT&T/BellSouth* conditions, such as the commitments to: (a) reduce Phase II price flex special access rates for 48 months to be no higher than in areas where it had not received Phase II pricing flexibility, (b) not include in any pricing flexibility contract or tariff access service ratio terms which limit the extent to which customers may obtain transmission services as UNEs rather than special access services, (c) not file a petition or implement any forbearance from 251 obligations, (d) not increase state approved prices for UNEs and collocation arrangements, (e) allow a CLEC to extend any current interconnection agreement, whether expired or not, and (f) allow a CLEC to use its existing ICA as the template for future negotiations, should not be required here, as they were in the *AT&T/BellSouth Order*.

Applicants also assert that “[t]he ‘big footprint’ objection would apply equally to any merger of LECs, many of which have been previously granted without conditions.”<sup>4</sup> Applicants do not cite any examples, and we are aware of no examples of mergers approved without conditions involving a combined footprint that is close to being as large as the approximately 17,300,000 access lines to be served by the merged company that would result from approval of this merger.

In discussing the Commission’s “big footprint” theory, Applicants also argue that no harms will result because the Applicants’ networks are allegedly “complementary.”<sup>5</sup> But that is the essence of the big footprint theory: by increasing the scope of their networks through merger, Applicants have an increased incentive and ability to discriminate against CLECs.<sup>6</sup> Moreover, in the very next breath Applicants assert that they “will face significant ongoing competition” from AT&T and Verizon.<sup>7</sup> Applicants thus recognize that ILECs whose territories do not overlap nonetheless compete with one another. AT&T’s and Verizon’s territories do not overlap with Qwest’s and CenturyLink’s to any greater extent than Qwest’s and CenturyLink’s overlap with each other, yet Applicants claim that AT&T and Verizon will provide competition for the merged

<sup>4</sup> Applicants’ Reply Comments at 15-16.

<sup>5</sup> Applicants’ Reply Comments at 17.

<sup>6</sup> *SBC/Ameritech Merger Order*, ¶¶ 191-193, 207.

<sup>7</sup> Applicants’ Reply Comments at 17.

company. If this is true, then CenturyLink and Qwest are competing with each other today, and such competition will be eliminated if the merger is approved.

Finally, Applicants contend that conditions are not needed to prevent discrimination because Applicants' competitors "will immediately expose any discriminatory behavior."<sup>8</sup> This argument proves too much; if true, it would show that it was unnecessary for the Commission to impose any conditions in any of the prior RBOC mergers. In requiring those conditions, the Commission at least implicitly rejected the notion that the victim of discrimination is adequately protected merely by having an ability to "expose" the discrimination. The Commission has consistently wisely chosen to impose conditions that prevented the ILEC from engaging in discrimination in the first place, thereby imposing a burden of compliance on the applicants seeking approval of the transaction, rather than shifting the burden to competitors to identify and prove the existence of discrimination in subsequent complaint proceedings. The Commission's past practice of imposing conditions on mergers involving RBOCs is a reasonable exercise of regulatory oversight that recognizes that allowing ILECs to merge into bigger ILECs creates additional leverage for the combined entity above and beyond the advantages that that FCC has long acknowledged that ILECs already enjoy over competitors.<sup>9</sup> It should do the same here. An ounce of prevention is worth a pound of cure.

As to benchmarking, Applicants contend that the loss of a benchmark does not justify "holding up a merger," citing the Commission's finding in the *AT&T/BellSouth Order* that "benchmarks were unnecessary because each company's own performance was subject to monitoring."<sup>10</sup> The "monitoring" to which the Commission referred was part of the § 271 process that is applicable only to BOCs. This reasoning is inapplicable in large part to CenturyLink, whose operating companies are not BOCs, and whose performance is largely not subject to monitoring.

<sup>8</sup> Applicants' Reply Comments at 18.

<sup>9</sup> See, e.g., *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket 96 - 98, FCC 96 - 325, 11 F.C.C.R. 15499, 1996 WL 452885 (FCC, Rel. Aug. 8, 1996) at ¶¶10 and 218

<sup>10</sup> Applicants' Reply Comments at 19.

Applicants also argue that where benchmarks are needed “there will remain plenty of competitors as options.”<sup>11</sup> It is unclear what Applicants mean, but the purpose of benchmarking is to measure the performance of an ILEC in complying with its unbundling and related obligations under the Telecommunications Act of 1996. To the extent that Applicants’ “competitors” are not ILECs, they are not subject to the same obligations and cannot serve as helpful benchmarks. This is especially true with respect to wholesale last mile for which ILECs are, in nearly all instances in their region, the only wholesale option for CLECs such as PAETEC that focus almost exclusively on serving business customers.

## **B. Merger-Specific Injury to Competition**

As a threshold matter, the Commission should accord no weight to that portion of Applicants’ September 29, 2010 *ex parte* (the first page after the first paragraph and the entire second page) that discusses a settlement agreement involving Applicants, PAETEC, and others before the Iowa Utilities Board (“IUB”). In the Iowa settlement agreement, Applicants and the other parties agreed that “they shall not use this agreement in any other proceeding as evidence of any other Party’s position in that proceeding.” Yet that is what Applicants’ September 29, 2010 *ex parte* does, arguing that:

The Iowa settlement resolved all of the CLEC intervenors’ concerns regarding the combined companies’ Operations Support Systems (OSS), change management systems (CMP), interconnection agreements (ICAs) and performance metrics. . . . The Iowa settlement thus addresses and resolves the same major categories of concerns as raised by the CLECs in their recent [FCC] *ex parte* filings.

Because Applicants’ use of the Iowa settlement in their September 29, 2010 *ex parte* violated the terms of the Iowa settlement itself, PAETEC filed a motion with the IUB to enforce the settlement agreement by, among other things, requiring Applicants to withdraw that portion of its September 29, 2010 *ex parte* that discusses the Iowa settlement.<sup>12</sup> Although Applicants claimed that their *ex parte* had not violated the terms of the Iowa settlement, their attempted defense highlighted the violation of that agreement when Applicants admitted that they

<sup>11</sup> Applicants’ Reply Comments at 19.

<sup>12</sup> Exhibit 1 hereto..



argued “the Iowa settlement thus *addresses and resolves* some major categories of *concerns as raised by the CLECs* in their recent ex parte filings with the FCC.” That is, the Applicants argued that the Iowa settlement resolves the CLECs’ concerns at the FCC – something the CLECs not only never agreed to, but made it known to Applicants that such a representation was a deal breaker and insisted on language expressly forbidding the Applicants from doing so. Even after PAETEC filed that motion with the IUB, Applicants made yet another filing with the FCC, arguing that the Iowa settlement serves as a “useful model[] for resolving the issues” raised by PAETEC and the other CLEC signatories for the Iowa settlement, again violating their undertaking in the Iowa settlement itself not to use it “in any other proceeding as evidence of any other Party’s position in that proceeding.”<sup>13</sup>

Even apart from the fact that this Commission should not allow Applicants to use the Iowa settlement in violation of the terms of the settlement itself, the settlement terms certainly do not “resolve all of the CLEC intervenors’ concerns.” PAETEC and other CLEC intervenors in both the IUB proceeding and this proceeding raised have consistent, legitimate, and specific concerns about the prospect of CenturyLink making detrimental changes to Qwest’s wholesale practices in Iowa and elsewhere. Settlement by its nature, however, involves compromise by all parties. Historically, imposition by the IUB of mandatory conditions upon approval of reorganizations has not been common, whereas it has been very common at the FCC.

Moreover, the short statutory time-frame for consideration by the IUB of such an application made protracted discovery fights impractical; as a result, in the IUB proceeding, no CLEC obtained the materials the Applicants deemed “Highly Confidential.” Given that the IUB had historically approved transactions without imposing conditions, PAETEC was willing to make certain compromises in Iowa to ensure some marginal protection for its Iowa operations rather than taking a risk of obtaining no protections at all against degradation of OSS in Iowa, for example. The calculus in entering into the Iowa settlement also factored into it the expectation (as reflected in the settlement agreement itself) that PAETEC would be able to continue its advocacy for more meaningful pro-competitive commitments or conditions in other jurisdictions, including at the FCC. Thus, compromises made in Iowa are not compromises that would be made in a jurisdiction such as the FCC with a history of attaching meaningful conditions. Applicants’ assertion that the Iowa compromise terms “resolved all concerns”

<sup>13</sup> Letter, Karen Brinkman, Esq., Counsel for CenturyLink, to Marlene H. Dortch, October 13, 2010.

raised by PAETEC and other CLECs in their FCC comments thus defies both the nature of settlements and any reasonably honest discussion of this particular settlement.

### 1. OSS Integration Issues

The Joint Commenter Comments demonstrated the importance of the Commission carefully evaluating the impact of the merger on Applicants' wholesale OSS and the risk that efforts by the Merged Company to save money by integrating two different sets of OSS could injure competition. Those Comments also pointed out the importance of ensuring that any replacement OSS to be implemented in Qwest BOC territory was subjected to third party testing before the existing Qwest OSS is replaced. As the FCC stated in approving Qwest's Section 271 application:

The most probative evidence that OSS functions are operationally ready is actual commercial usage. Absent sufficient and reliable data on commercial usage, the Commission will consider the results of carrier-to-carrier testing, independent third-party testing, and internal testing in assessing the commercial readiness of a BOC's OSS. Although the Commission does not require OSS testing, a persuasive test will provide us with an objective means by which to evaluate a BOC's OSS readiness where there is little to no evidence of commercial usage, or may otherwise strengthen an application where the BOC's evidence of actual commercial usage is weak or is otherwise challenged by competitors. *The persuasiveness of a third-party review, however, is dependent upon the qualifications, experience and independence of the third party and the conditions and scope of the review itself. If the review is limited in scope or depth or is not independent and blind, the Commission will give it minimal weight.*<sup>14</sup>

The Joint Commenter Comments could not, however, discuss Applicants' plans for integrating OSS because no plans had at that time been publicly disclosed.<sup>15</sup> Applicants' Reply Comments provide very little additional information, beyond stating that no changes would be made for twelve months

<sup>14</sup> *Qwest 9 State 271 Order*, Appendix K "Statutory Requirements" at p. K-16 (emphasis added).

<sup>15</sup> Joint Commenter Comments at 7-12, 67-68.

after the merger, and that Applicants will continue to comply with Section 271 in Qwest territory.<sup>16</sup> Applicants offer no further commitments. There are several reasons why the FCC should impose substantial additional commitments with respect to Applicants' OSS.

First, as outlined in the Direct Testimony of Timothy Gates in the Minnesota proceeding, the third party testing that served as the predicate for the FCC's approval of Qwest's § 271 application would prove nothing about a replacement OSS, such as CenturyLink's EASE OSS, that had never been subjected to such testing. It is appropriate for the FCC to require that any replacement OSS be subjected to the same type of testing.<sup>17</sup>

Second, as has been shown in testimony in state proceedings, replacing the Qwest OSS that passed three years of rigorous testing with another OSS that has not been so tested will take much longer than one year, as the replacement OSS must be shown to meet the same exacting standards that the FCC required of Qwest and the other BOCs when it initially granted the § 271 authority. Mr. Gates's Direct Testimony in the Minnesota proceeding details the processes required to replace Qwest's OSS with another OSS, such as EASE, which is now being used by CenturyLink.<sup>18</sup> As shown in the Surrebuttal Testimony of Dr. August Ankum in Minnesota, Applicants have admitted that "after the first twelve months, the post-merger firm may and is in fact likely to modify or change its operations support systems (OSS)."<sup>19</sup> As reflected in the Reply Comments of

<sup>16</sup> Applicants' Reply Comments at 20-25.

<sup>17</sup> Direct Testimony of Timothy Gates, August 19, 2010, *In the Matter of the Joint Petition for Approval of Indirect Transfer of Control of Qwest Operating Companies to CenturyLink*, Docket No. P-421, et al./PA-10-456 (Minn. P.U.C) ("Gates Direct Testimony") at 42-60, 121-22 (Exhibit 2 hereto).

<sup>18</sup> Gates Direct Testimony at 34-60.

<sup>19</sup> Surrebuttal Testimony of Dr. August Ankum, August 19, 2010, *In the Matter of the Joint Petition for Approval of Indirect Transfer of Control of Qwest Operating Companies to CenturyLink*, Docket No. P-421, et al./PA-10-456 (Minn. P.U.C.) ("Ankum Surrebuttal Testimony") at 2 (Exhibit 3 hereto), citing Hunsucker rebuttal testimony for Applicants. See Surrebuttal Testimony of Timothy Gates, August 29, 2010, *In the Matter of the Joint Petition for Approval of Indirect Transfer of Control of Qwest Operating Companies to CenturyLink*, Docket No. P-421, et al./PA-10-456 (Minn. P.U.C.) ("Gates Surrebuttal Testimony") at 21 (Exhibit 4 hereto) (CenturyLink Minnesota testimony shows that "CenturyLink will undertake a significant systems integration effort if the proposed merger is approved.").

New Edge Network, Applicants have indicated that if the Merged Company were to utilize a single OSS, it would most likely be EASE, rather than Qwest's OSS.<sup>20</sup> This is confirmed by the Minnesota Surrebuttal testimony of Timothy Gates, who has pointed out that since Applicants have asserted that they intend to have a unified ordering model interface to LSRs (local service requests), and Qwest's interface is not uniform ordering model compliant, this necessarily means that the Qwest interface for processing LSRs will have to be replaced or modified.<sup>21</sup>

Third, as reflected in Mr. Gates's Direct Testimony in Minnesota, any changes to Qwest's OSS would require that CLECs make substantial changes in their own systems that interface with Qwest's OSS.<sup>22</sup> Those changes require notice and advance planning on the part of CLECs.<sup>23</sup> In contrast with the approach that Applicants have taken before the FCC that they reserve the right to decide what to do after the merger is completed, unfettered by regulatory constraints, as long as any they do not implement it until after one year after closing, more notice is needed to enable the CLECs, as well as the Merged Company to make changes. CLECs need time to plan and budget for changes in their own systems that interface with those of the Merged Company in order to avoid disruptions in service to their own customers, something that will inure to the Merged Company's competitive advantage and to the CLECs' disadvantage, even if inadequate time for planning is the Merged Company's fault.

Moreover, making these changes will not only be time consuming for CLECs, but also will impose considerable expense on PAETEC and other CLECs, who will be the Merged Company's competitors. PAETEC has previously made substantial investments totaling more than a million dollars in its own back office systems to interface directly with the Qwest OSS. It would be patently unfair to render useless PAETEC's own IT enhancements that bond PAETEC's own systems directly with various Qwest OSS and their supporting databases. PAETEC incurred the expense of these system enhancements to enable PAETEC to make its own operations significantly more cost efficient.

<sup>20</sup> Reply Comments of New Edge Network, Inc., July 27, 2010, at 4.

<sup>21</sup> Gates Surrebuttal Testimony at 23.

<sup>22</sup> Gates Direct Testimony at 51-55.

<sup>23</sup> Gates Direct Testimony at 51-54

For example, when PAETEC e-bonded its trouble ticket management system<sup>24</sup> with the Qwest system for handling DS1 circuits, PAETEC was able to shift 12 full time equivalents from manually processing trouble tickets to other responsibilities.<sup>25</sup> Today, for the average 1,200 trouble tickets opened monthly with Qwest for DS1 circuits, the PAETEC back office system submits, on average, nearly 13,000 "events" (*i.e.*, an electronic communication from the PAETEC OSS to the Qwest OSS, or about 11 electronic communications per trouble ticket), and Qwest's OSS generates an average of 5 responsive "events" per trouble ticket.

If that trouble ticket information exchange reverted to a manual non-e-bonded process, both PAETEC and Qwest would need to assign significantly more personnel to manage the same amount of trouble tickets. PAETEC conservatively estimates that its annual labor costs would increase more than \$700,000 to work trouble tickets manually if the e-bonding functionality is eliminated from Qwest's OSS. And if the Merged Company does not increase its own support staff to accommodate the additional call volume, the additional annual cost to PAETEC would increase dramatically as "hold times" increase.

Elimination of e-bonding for trouble ticket management for DS1 circuits will also significantly impact the efficiency of PAETEC's ability to meet out of service ("OOS") and Mean Time to Repair ("MTTR") service quality metrics. When a customer contacts PAETEC to report an OOS, PAETEC uses software to electronically test the service and circuit to the smart jack. If that electronic testing comes up clean to the smart jack, the PAETEC OSS automatically generates a detailed trouble ticket that is sent to Qwest's OSS using the e-bonding, which initiates their trouble ticket in the Qwest OSS. If e-bonding is eliminated, PAETEC personnel will have to manually open a trouble ticket with Qwest, which, on average, takes 30 minutes to properly complete the form. Obviously, adding an extra 30 minutes before a trouble ticket is opened in the Qwest OSS has at least two significant consequences: (1) most importantly, that means the customer will remain in an OOS condition for at least 30 minutes more than before, and (2) the MTTR will be extended by at least 30 minutes. Since PAETEC has Service Level Agreements ("SLAs") with every business customer

<sup>24</sup> The bonding of the PAETEC trouble ticket system with the Qwest trouble ticket system is referred to as Electronic Bonded Trouble Administration ("EBTA").

<sup>25</sup> A separate OSS e-bonding enhancement related to managing trouble tickets for POTS lines allowed PAETEC to shift an additional 25 full time equivalent positions from manually processing POTS-related trouble tickets to other responsibilities.

whose services are based on underlying DS1 circuits, increasing the MTTR would have multiple negative impacts for PAETEC. First, PAETEC's remedy payments associated with MTTR would increase, and second, business customers may ultimately take their business away from PAETEC since reduced service quality levels may be unacceptable. The additional operating inefficiencies, risk of additional SLA compensation and potential lost business impacts resulting from elimination of e-bonding for trouble ticket management of DS1 circuits would substantially increase the estimated \$700,000 annual cost increase to PAETEC.

The e-bonding also generates significant savings for both companies because the information exchanged between the PAETEC OSS and Qwest OSS also generates detailed documentation of the trouble ticket resolution without human intervention. The time and date stamp of when a ticket was opened, when Qwest acknowledged receipt, when Qwest assigned a tech (if required), when a tech made a site visit, what was done to fix the issue, when the ticket was closed, etc. is recorded in both companies' respective records without requiring human data entry. Again, that OSS-generated documentation would have to be replaced if the e-bonding capability is eliminated by CenturyLink without replacing with another functionally equivalent OSS. Replacing the system-generated documentation with manual data entry would add substantially to the estimated \$700,000 annual cost increase to PAETEC. Clearly, degrading the functionality of the current OSS would be a negative synergy if CenturyLink is permitted to make such changes.

Likewise, PAETEC was able to take the line loss notification provided by Qwest's OSS from its system and direct that information into the PAETEC billing system to cut off an end user billing. That OSS enhancement enabled PAETEC to reallocate employees previously responsible for manually tracking line loss notifications and manually inputting that information into the PAETEC system to cease a billing to order writing functions to improve order processing intervals for PAETEC's end users. Moreover, PAETEC's implementation of this OSS functionality resulted in a 98% reduction in end user complaints relating to the "billing after downgrade" issue. In contrast, where PAETEC does not have a comparable OSS functionality with other ILECs, "billing after downgrade" continues to occur and generates end user complaints. The manual processing of line loss notifications simply results in significantly more errors.

**a. Qwest OSS is functionally superior to EASE**

In comments opposing the merger, Joint Commenters attached a spreadsheet comparing certain aspects of the three separate OSS systems – CenturyTel, Embarq and Qwest. CenturyLink claims that many of the allegations

made that the Qwest OSS is superior to CenturyLink's were "false."<sup>26</sup> The factual basis of CenturyLink's response represents either a (a) misunderstanding of the difference between the comparative functionality of the Qwest OSS and EASE, or (b) a nuanced misrepresentation of the capabilities of EASE compared to Qwest, neither of which bodes well for the veracity of Applicants' claims.

Before responding to specific claims by Applicants, however, it is important for PAETEC to identify some basic overarching differences between Qwest's OSS and EASE that cannot be swept under the rug by focusing on narrow allegations of incorrect assertions regarding EASE.

First, various Qwest OSS is bonded to PAETEC's OSS. That allows PAETEC personnel to make one data entry/input into the PAETEC system, which system then submits the data to Qwest's system directly without further human intervention. Likewise, Qwest's systems provide responses which directly flow into the PAETEC systems, which information may trigger notices or internal order or work assignment processing without further human intervention. The Qwest OSS allows this bi-directional flow-through process with the PAETEC system. In contrast, EASE is a stand-alone system that requires human interface between it and PAETEC's own back office systems. The lack of bonding means that PAETEC personnel are required to input data twice: first in the PAETEC system(s), and then again in EASE. Likewise, although EASE provides data electronically within the EASE application to PAETEC personnel who access EASE, there is no ability to flow that information directly into the PAETEC systems. Thus, PAETEC is required to key into its own system data received from EASE, whereas the same data flows straight from Qwest's OSS into PAETEC's system, with no keying of data or manual interface by PAETEC.<sup>27</sup>

Second, the Qwest OSS is significantly more robust in terms of depth and breadth of functions. While Applicants may claim that EASE has several of the same functions as the Qwest OSS, it only has similarity at high-level functions. The sub-functions incorporated with the Qwest OSS are far more extensive and robust than the EASE system.

<sup>26</sup> Applicants' Reply Comments at 11, n. 32.

<sup>27</sup> PAETEC has continued to ask CenturyLink about its e-bonding capabilities. As recently as September 2010, PAETEC was told that there was not a road map that could be provided for e-bonding for pre-order functions.

Finally, Qwest OSS has detailed documentation within the Qwest systems and on Qwest's website for assistance, training and reference. This documentation is easily accessible to users 24 hours a day, 7 days a week. The documentation includes on-line training, instructor-led training, user-guides and job-aids. By contrast, the documentation on the CenturyLink website to support the EASE application is limited at best. PAETEC personnel have scoured the CenturyLink website on numerous occasions to determine the functionality of EASE and how to access the system to identify its capabilities. Though the system is considered "user friendly" for those who are familiar with a Virtual Front Office (VFO) interface (human interface between systems), the supporting documentation available on the website and within the system is cryptic for infrequent and new users.

With respect to Applicants' specific assertions that Joint Commenters had previously made false claims regarding EASE, PAETEC maintains that the concerns Joint Commenters raised about EASE are accurate. On page 23 of their Reply Comments, Applicants state:

The Joint CLEC Commenters also claim that CenturyLink processes orders more slowly than Qwest, because of batch processing. Again, that is false. All CenturyLink wholesale customers have the option to have their orders entered through CenturyLink's web-based graphical user interface, an online ordering system, and such orders are processed in real time or near real time.

The fact is that the Qwest OSS processes LSR and ASR orders in real time and the EASE system does not. It is true that ASR/LSR Ordering transactions can be sent electronically via File Transfer Protocol ("FTP") using EASE. However, LSR transactions are batch processed by EASE every 20 minutes, and ASRs are processed three times a day. Characterizing this performance as "real time" or "near real time" order processing is simply trying to redefine "real time" order processing to be something less than exists today between the e-bonded PAETEC and Qwest OSS. The lack of true "real time" order processing between a CLEC and EASE makes the EASE OSS significantly less efficient for a CLEC's operations.

One such example of real time processing offered through the Qwest OSS relates to Firm Order Commitments ("FOCs"). The Qwest OSS issues the FOC to



the CLEC via the e-bonding as soon as the Qwest system determines the FOC.<sup>28</sup> PAETEC's OSS electronically takes the FOC information received via the XML interface and populates its own back end systems that schedule PAETEC's tech install assignments. Thus, because of the e-bonding between the Qwest and PAETEC OSS, PAETEC is able to schedule its tech install assignments without manual intervention.

In contrast, EASE requires a CLEC to access and recheck the EASE system manually in search of a FOC response. This makes accessing FOCs a guessing game that requires CLEC personnel to monitor the EASE system manually, which in some instances may take longer than 48 hours. And in contrast to the direct feed of the FOC produced by the Qwest OSS FOC into the PAETEC back office systems, once EASE issues the FOC, then a PAETEC employee is required to access EASE, retrieve the data, and re-key that information into the PAETEC system. The requirement that a CLEC undertake such duplicative steps to use the information provided by EASE is a recurring problem with the EASE system as it exists today.

CenturyLink also disputes the claim that it imposed a limit of 50 orders per day.<sup>29</sup> It claims that such a limit had not been in place for over a year. If CenturyLink has not had any order volume limitations for over a year, then CenturyLink failed to inform or direct PAETEC users away from CenturyTel Service Guide for CenturyTel ILEC Areas ("CenturyTel Service Guide"), which was the on-line resource available to PAETEC (and which PAETEC has relied) until August 13, 2010. PAETEC has not received notice alerting of a new redesigned website.

On the other hand, Qwest has a multitude of information available to CLECs on-line regarding its products, ordering, provisioning, processing, systems, tutoring, templates, guidelines, rules, service areas, contacts, escalations, etc to assist CLECs. If indeed, PAETEC's understanding of the business rule noted above was in error, it is because Century Link had the incorrect information on-line at the website that it provides for CLECs to use in their operations.

Qwest OSS allows CLECs access to download and use databases to supplement and incorporate information within processes associated with a

<sup>28</sup> It is PAETEC's experience that the Qwest OSS issues the FOC within 24 hours.

<sup>29</sup> Applicants' Reply Comments at 22-23.

CLEC's own OSS. One example of a database available to CLECs from Qwest and not from CenturyLink is Service Address Guide ("SAG") database. The SAG database, which provides address records, is maintained and serviced by Qwest for the CLECs and Qwest. For CLECs that are not e-bonded with Qwest OSS, Qwest provides notices of updates related to the address validation tool. Then once a month, the file can be downloaded. For CLECs that are e-bonded, such as PAETEC, the SAG data is automatically downloaded and PAETEC's system is then automatically updated monthly without human intervention. In contrast, though EASE provides a pre-order address validation query, it is strictly limited to one unique address. There is no download option available for the CenturyLink database, so access is restricted to the pre-order address validation query for a single transaction.

The monthly SAG download is critical to PAETEC's internal pre-ordering and ordering processes. PAETEC uses SAG data as a verification tool prior to initiating any order submissions. Qwest's SAG is an address database that, in addition to validating an address, displays the address and the associated range of addresses within the Qwest footprint. When the SAG database is downloaded, the PAETEC OSS syncs the address information with LERG to identify the associated local service office (CLLI code), NPA-NXX, Operating Company Number ("OCN") for all of the addresses within PAETEC's databases. In contrast, EASE offers a single transaction that only validates the unique address within the CenturyLink service area. Even through the pre-order address validation query (the single transaction) is available to view in EASE, the validation of a single address by EASE pales as compared with the functionality that the SAG database download provides to PAETEC. Again, the SAG database download allows the PAETEC OSS to sync all of the addresses within the Qwest footprint with LERG, which enables PAETEC to populate all its back office systems with the associated correct local service office, NPA-NXX, or OCN for each address. This linking of the LERG data with validated addresses from the SAG download is used by PAETEC's OSS to, among other functions, automatically (a) generate clean orders, (b) verify that an end user port request does not cross a rate center, and (c) verify whether a particular service offering can be provided at a particular end user location. EASE limits PAETEC to one address search at a time and provides no means for updating PAETEC's internal systems and database.

If CenturyLink or the Merged Company were to decide to cease maintenance and availability of SAG to PAETEC, PAETEC would immediately require OSS development for the Qwest region to (1) restructure its automated ordering processes and (2) find an alternative database resource, assuming there is one, that would be available to update PAETEC's internal database. Eliminating

access to Qwest's SAG database and download functionality will harm PAETEC's ability to submit clean orders and eliminate the ability to use this information for other uses. PAETEC would incur significantly more operating costs to process orders and serve its end user customers if this functionality is eliminated.

Applicants also take issue with Joint Commenters' claim that EASE does not reject incorrect orders. In response, Applicants claim that EASE online ordering tool identifies a "significant number of errors before order processing."<sup>30</sup> It is noteworthy that Applicants merely claim that EASE identifies a number of errors. Applicants do not assert that EASE matches the functionality of the Qwest OSS in terms of the total number of errors identified, nor do Applicants discuss how such errors are handled once identified. The functionality of EASE pales by comparison to the Qwest OSS.

The difference stems again from the fact that PAETEC is electronically-bonded with the Qwest OSS, a functionality that does not yet exist with EASE. Because CLECs, such as PAETEC, that are e-bonded with the Qwest OSS, they are able to take advantage of the numerous edits for the fields of the automated processes when placing orders within their own system to ensure that the data is accurate, errors are reduced and orders are not rejected. These field edits were a result of joint development with Qwest to ensure that both OSS "interfaced" accurately with each other in a minimal amount of time. Consequently, the potential rejects and subsequent submissions resulting from typos, incorrect information (such as a wrong NC/NCI code) and/or missing information is reduced because of the edits in the PAETEC system and Qwest back-end system prior to Qwest accepting the data. The same applies to Qwest edit responses, since the systems interface directly with one another.

In contrast, the CenturyLink User Interface requires PAETEC users to re-input information back and forth between the PAETEC and EASE systems. The lack of e-bonding means that PAETEC personnel are required to "re-key" identifiers for an order each time the user accesses the CenturyLink or PAETEC system for data input, search, retrieval, and or to update in addition to obtaining and transferring the appropriate information from the system. EASE is simply not nearly as functional as the Qwest OSS, and as EASE is not e-bonded with other carriers, it does not provide an efficient information exchange for those few functions it does perform.

<sup>30</sup> Applicants' Reply Comments at 23.

**b. Change management process**

PAETEC also disagrees with Applicants' assertion in their Reply Comments that CenturyLink has an adequate change management process.<sup>31</sup> The FCC has found that a change management process is a critical component for a CLEC to have a "meaningful opportunity to compete by providing sufficient access to a BOC's OSS" and has stated that it ensures the adequacy of a BOC's change management process by finding the presence of five factors:

(1) that information relating to the change management process is clearly organized and readily accessible to competing carriers; (2) that competing carriers had substantial input in the design and continued operation of the change management process; (3) that the change management plan defines a procedure for the timely resolution of change management disputes; (4) the availability of a stable testing environment that mirrors production; and (5) the efficacy of the documentation the BOC makes available for the purpose of building an electronic gateway.<sup>32</sup>

Qwest's change management process was found to meet this test. CenturyLink's by contrast, as shown in the Gates Direct Testimony in Minnesota, does not meet any of the five components of this test.<sup>33</sup> Similar to its requirement in the Frontier/Verizon Merger,<sup>34</sup> the FCC should require that the Merged Company maintain Qwest's Change Management Process ("CMP"), utilizing the terms and conditions set forth in the CMP Document. In addition, the Merged Company should be required to dedicate the resources needed to complete pending CLEC change requests in a commercially reasonable time frame.

In Reply Comments filed in response to Joint Commenters' concerns with EASE, CenturyLink claimed that OSS changes should be resolved through the *ordinary course of business*, and in response to marketplace conditions.

<sup>31</sup> Applicants' Reply Comments at 24.

<sup>32</sup> *Qwest 9-State 271 Order* at ¶ 132.

<sup>33</sup> Gates Direct Testimony at 137-41.

<sup>34</sup> *Frontier/Verizon Merger Order*, Appendix C, p. 35, Condition 14.

CenturyLink pledged that it will give CLECs “ample and adequate notice” of future changes, consistent with its legal obligations and *accepted business practices*.<sup>35</sup> Rather than providing comfort to PAETEC, CenturyLink’s statements confirm that it seeks an unfettered ability to change the Qwest OSS to the detriment of its wholesale CLEC customers sometime in the future when the authority for regulators to adequately oversee such changes will be less certain.

For example, an “ordinary course of business” for CenturyLink has been to implement OSS changes unilaterally without any formal process for CLEC input on the proposed changes. Indeed, CenturyLink’s pledge to give “adequate notice” of future changes should leave no doubt that it believes it has a narrow obligation to merely *notify* CLECs of OSS changes, rather than obtain their input. Likewise, it has also been a CenturyLink “accepted business practice” to announce an OSS change the day the modification goes live, leaving CLECs unaware of the change beforehand.

## **2. Unbundling and Interconnection Agreements**

Over the past 14 years, CLECs have developed a working relationship with Qwest regarding interconnection agreements and unbundling. While the relationship has not been without strife, CLECs and Qwest have become used to working together with certain forms of interconnection agreements and processes for doing business. While it is understandable that CenturyLink may prefer to disrupt the format of the interconnection agreements and processes to convert them to what it is accustomed to working with, just as it may prefer to replace Qwest’s OSS with EASE, such disruption imposes a merger-related cost on PAETEC and other CLECs.

Raising its rivals’ costs of competing with it generates a benefit for the Merged Company, but not for consumers, who will be worse off if the Merged Company is able to handicap its competitors this way. To offset this adverse competitive effect, the Commission has recognized in previous mergers that it is appropriate to impose conditions that facilitate competition, even if the conditions are not directly related to the merger.<sup>36</sup>

<sup>35</sup> Applicants’ Reply Comments at 21.

<sup>36</sup> See, e.g., *SBC/AT&T Merger Order*, ¶ 51, *Verizon/MCI Merger Order*, ¶ 51; *AT&T/BellSouth Merger Order*, ¶¶ 185, 222.

Applicants do not acknowledge these precedents, contending, for example, that Joint Commenters' request that "Applicants' ILECs shall cap UNE rates at current levels"<sup>37</sup> should be rejected because it is not "a legitimate merger concern and in any event, UNE stability is already assured by Sections 251(c)(3) and 271(c)(2)(B)."<sup>38</sup> Applicants do not, however, even attempt to show why this case is different from the prior merger cases in which conditions not directly related to the merger were imposed.<sup>39</sup> Examples of a few such conditions from the *AT&T/BellSouth Order* are listed in a footnote below.<sup>40</sup> In those cases, the Commission, by incorporating the capping of UNE rates at current levels as merger conditions and imposing many of the conditions CLECs seek in this proceeding, found that such capping and other conditions addressed "legitimate merger concerns."

Moreover, Section 251(c)(3) was just as much applicable in those cases as in the instant case, while Section 271(c)(2)(B) was more applicable in those cases than in the instant case, since it does not apply to CenturyLink's legacy companies. In addition, UNE price stability is not assured by those sections of the Act. Section 251(c)(3) would not preclude CenturyLink from seeking UNE rate increases the day after the merger closes, based on the submission of cost studies predicated on differences between its rate methodology and Qwest's, alleged

<sup>37</sup> Joint Commenters' Comments at 47

<sup>38</sup> Applicants' Reply Comments at 34.

<sup>39</sup> See *SBC/AT&T Merger Order*, ¶ 51; see also *Verizon/MCI Merger order*, ¶ 51, *AT&T/BellSouth Merger Order*, ¶¶ 185, 222.

<sup>40</sup>

- Conditions on the provision of special access service (*AT&T/BellSouth Order* at 150-52);
- Rates for tandem transit service; (*AT&T/BellSouth Order* at 153);
- Provision of ADSL service;<sup>40</sup> (*AT&T/BellSouth Order* at 153-54);
- Net neutrality commitments;<sup>40</sup> (*AT&T/BellSouth Order* at 154-55);
- Agreement not to file forbearance petitions<sup>40</sup> (*AT&T/BellSouth Order* at 155).

changes in costs that resulted from the merger or otherwise, or for any other reason. As Dr. Ankum noted in his Minnesota Surrebuttal Testimony, while state PUCs have historically rejected ILEC attempts to recover merger costs in wholesale rates,

post-hearing wholesale rate/UNE cost proceedings are an expensive, time consuming, and uncertain way of attempting to prevent the Joint Petitioners from improperly recovering merger costs from wholesale customers/competitors. Indeed, those merger-related costs could be buried in complex cost models that allow them to find their way into wholesale rates undetected.<sup>41</sup>

Finally, Section 271(c)(2)(B) does not regulate UNE prices and to the extent that it governs pricing of Qwest's network elements that are not UNEs, the Commission has never conducted a proceeding to determine the compliance by any BOC with these requirements, and any state commission efforts to conduct such a proceeding have been struck down by the courts.<sup>42</sup>

Another example in which Applicants fail to acknowledge the Commission's prior adoption of merger conditions not directly related to the

<sup>41</sup> Ankum Surrebuttal Testimony at 27.

<sup>42</sup> See, e.g., *Verizon New England, Inc., v. Maine Public Utilities Commission*, 509 F.3d 1, 7 (1st Cir. 2007) (holding the authority to determine which elements BOCs are required to provide under Section 271 and the rates for them "is granted exclusively to the FCC") (subsequent history omitted); *Illinois Bell Telephone Co., Inc., v. Box*, 548 F.3d 607, 613 (7th Cir. 2008) ("[T]he state commission's power over [an interconnection] agreement is limited to the terms in the agreement relating to access under section 251."); *Southwestern Bell Tel. L.P. v. Mo. Pub. Serv. Comm'n*, 530 F.3d 676, 682-83 (8th Cir. 2008) (rejecting the claim that "states have implied authority to ensure ILECs comply with § 271" in interconnection agreement arbitration proceedings), *cert. denied*, 129 S.Ct. 971 (2009); *Qwest Corp. v. Arizona Corp. Commission*, 567 F.3d 1109, 1116 (9th Cir. 2009) ("We join the First, Seventh, Eighth, and Eleventh Circuits in holding that the Act does not authorize state commissions to implement Section 271 terms and rates in interconnection agreements") (footnote omitted); see also *BellSouth Telecommunications, Inc. v. Georgia Pub. Serv. Comm'n*, 555 F.3d 1287, 1288 (11th Cir. 2009) (per curiam) (deciding state commissions are not authorized to implement Section 271); See also *Qwest Corp. v. Arizona Corp. Commission*, 567 F.3d at 1116 (citing *Michigan Bell Tel. Co. v. Lark*, No. 06-11982, 2007 WL 2868633, at \*6 (E.D.Mich. Sept.26, 2007); *BellSouth Telecomms., Inc. v. Kentucky Public Serv. Comm'n*, No. 06-65-KKC, 2007 WL 2736544, at \*6-\*7 (E.D.Ky. Sept.18, 2007); *BellSouth Telecomms., Inc. v. Mississippi Public Serv. Comm'n*, 368 F.Supp.2d 557, 565-66 (S.D.Miss.2005)).

merger is copper loop retirement. Joint Commenters showed in their comments why it would be appropriate for the FCC to require that Applicants cease retiring copper loops until the Commission completes its rulemaking in RM-11358.<sup>43</sup> Applicants respond that "there is no basis for such a condition" because "the issue is entirely divorced from the merger," pointing to the National Broadband Plan's statements about copper loop retirement as evidence that the issue is industrywide.<sup>44</sup> PAETEC does not dispute that the copper loop retirement issue is industrywide; as shown above, however, the Commission has in the past addressed numerous industrywide issue in merger conditions as a means of offsetting the harm that results from the merger.

With respect to all of the interconnection agreement conditions that PAETEC and other CLECs have proposed that are arguably not directly related to the merger, as Dr. August Ankum explained in his Direct Testimony in the Minnesota proceeding, conditions with respect to interconnection agreements that have been proposed by PAETEC and other CLECs, many of which were imposed in prior BOC mergers, are appropriate because:

the availability of wholesale services should be stable over the foreseeable future to offset the substantial uncertainty and risks of degraded wholesale services associated with the proposed merger, including the risks that stem from the Merged Company's efforts to achieve synergy savings post-merger. These conditions ensure that the Merged Company does not direct its integration efforts to the detriment of wholesale customers by withdrawing services or significantly changing the offerings Qwest currently makes available. These conditions also recognize that the Merged Company will be a larger carrier with a bigger footprint, possibly resulting in economies and efficiencies, as the Joint Applicants claim. To serve the public interest, any such economies and efficiencies should accrue in part to the benefit of captive wholesale customers and the general public as well as the merged company; otherwise, the Merged Company will enjoy an unreasonable cost advantage over its captive customers/competitors. As a result, if the Joint Applicants' claims of merger savings are accurate, those savings should decrease the costs associated with providing wholesale services and

<sup>43</sup> Joint Commenters' Comments at 48-51.

<sup>44</sup> Applicants' Reply Comments at 34.



interconnection to CLECs. Allowing the Merged Company to be the sole beneficiary of the economies and efficiencies resulting from the merger would have an anti-competitive and discriminatory impact on the merged company's captive wholesale customers, who depend on wholesale services from and interconnection with the ILEC to compete. Such a result would be inconsistent with the pro-competitive mandate of the Act, FCC orders, and state law, and contrary to the public interest.<sup>45</sup>

Joint Commenters also proposed that, as in past mergers, CLECs be permitted to extend their existing ICAs with Applicants.<sup>46</sup> Applicants do not contend that such a condition is unrelated to the merger, but attempt to dismiss it as "not a wise approach" because "it makes no sense to require CenturyLink to extend" an agreement that is nearing expiration "absent negotiation."<sup>47</sup> Applicants thus contend that a condition included in prior FCC merger orders "makes no sense," but offer no explanation why what made sense in prior mergers does not make sense in this merger. Not only did the FCC cross that bridge when it included such a condition in the *AT&T/BellSouth Merger Order*,<sup>48</sup> stating that this condition, along with others, "should reduce any incremental effect of the pending merger on the incentive to discriminate,"<sup>49</sup> but several state commissions have also used that approach in other mergers.<sup>50</sup> The condition makes perfect sense because, as the FCC has recognized, a merger increases the merged company's incentive to discriminate against CLECs; moreover, in a merger, the ILEC/CLEC relationship is disrupted by changes in personnel and systems. There should be no need for the new ILEC management to disrupt arrangements further

<sup>45</sup> Direct Testimony of Dr. August Ankum, August 19, 2010, *In the Matter of the Joint Petition for Approval of Indirect Transfer of Control of Qwest Operating Companies to CenturyLink*, Docket No. P-421, et al./PA-10-456 (Minn. P.U.C) ("Ankum Direct Testimony") at 65-66. (Exhibit 5 hereto.)

<sup>46</sup> Joint Commenters' Comments at 54.

<sup>47</sup> Applicants' Reply Comments at 33.

<sup>48</sup> *AT&T/BellSouth Merger Order*, Appendix F, "UNEs" commitment # 4.

<sup>49</sup> *AT&T/BellSouth Merger Order*, ¶ 185.

<sup>50</sup> See Ankum Direct Testimony at fns. 113-15.

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by insisting on changing terms and conditions of interconnection (except where change is required by law).

In addition, if the FCC agrees with PAETEC that CLECs should be permitted to extend their current agreements for a specified period of time, it should clarify that a CLEC's exercise of that right moots any ongoing negotiations or arbitration for a new agreement.

Similarly, Joint Commenters proposed that CLECs be permitted to start negotiation of new ICAs based on their existing ICA.<sup>51</sup> Ignoring the fact of the merger and the Commission's inclusion of such a condition in the *AT&T/BellSouth Order*, Applicants respond by pointing to the fact that neither the Act nor the Commission's rules require this.<sup>52</sup> The impact of such an approach would be to impose part of the costs of the merger on CLECs, since CLECs have invested a great deal of time and money in negotiating and arbitrating interconnection agreements with Qwest that follow Qwest's format, and that investment would be wasted if CLECs had to shift to the interconnection agreement template favored by CenturyLink.<sup>53</sup>

<sup>51</sup> Joint Commenters' Comments at 54

<sup>52</sup> Applicants' Reply Comments at 33.

<sup>53</sup> In an ex parte letter filed October 19, 2010, CenturyLink counsel submitted an agreement between Applicants and a CLEC, 360networks, in which Applicants agreed to extend the CLEC's interconnection agreement by 3 years and to allow the CLEC to base future interconnection agreement negotiations on the existing agreement. Letter of Karen Brinkman, Esq., counsel for CenturyLink, to Marlene H. Dortch, October 19, 2010. While this agreement reflects Applicants' acknowledgment of the appropriateness of these conditions, PAETEC disagrees with CenturyLink's assertion that the agreement with 360networks demonstrates that it is unnecessary for the Commission to impose merger conditions. First, the Commission cannot and should not delegate to private parties its obligations under Sections 214(a) and 310(d) to ensure that the merger is in the public interest. Second, such a delegation would unduly burden the hundreds of CLECs adversely affected by the merger, which absent an FCC willingness to impose conditions globally, would have no leverage to obtain reasonable conditions through private negotiations. This is highlighted by the fact that the agreement with 360networks only addressed a fraction of the issues that CLECs have raised. The Commission should not infer that 360networks did not care about the other issues. Rather, the fact that the agreement stated that "Nothing in this agreement shall preclude 360networks from obtaining the benefits of additional FCC conditions not addressed in this agreement"

The Staff of the Oregon PUC has agreed with PAETEC that it is appropriate to require the Merged Company to allow CLECs to start the negotiation of a new interconnection agreement with the Merged Company on the basis of the existing interconnection agreement,<sup>54</sup> as well as to allow CLECs extend their existing interconnection agreements for a period of four years<sup>55</sup> and to opt into any Qwest Oregon interconnection agreement,<sup>56</sup> as well as agreeing with a number of the other conditions PAETEC has advocated.<sup>57</sup>

### **III. Duration of conditions**

The Joint Commenter Comments suggested that conditions be in effect for a period of 7 years, or for 42 months, and thereafter until the Commission grants a forbearance request from the Merged Company to be relieved of conditions.<sup>58</sup> Joint Commenters pointed to the experience in the AT&T/BellSouth merger, in which immediately after the merger, AT&T announced price increases to go into effect as soon as the merger conditions expired and during the effective period of the conditions, AT&T engaged in regulatory and legal challenges that rendered many of the key provisions useless. Joint Commenters also pointed to the FCC's imposition of 6 years of conditions in the Time Warner/Adelphia Cable merger.

Applicants' response is Joint Commenters' suggestion is "absurd" because "[t]he combined company will continue to face substantial competition,

shows that 360networks is counting on the FCC to require additional conditions not contained in the settlement agreement with 360networks.

<sup>54</sup> Reply Testimony of Michael Dougherty, Staff Exhibit 100, Case UM 1484 (Or. PUC September 3, 2010) (Exhibit 6 hereto), at 55, proposed condition 42.

<sup>55</sup> *Id.* at 53, proposed condition 30.

<sup>56</sup> *Id.* at 55, proposed condition 43.

<sup>57</sup> *See. e.g., id.* at 53-55, proposed condition 31 (no increase in tariffed or wholesale rates for 4 years); proposed condition 32 (no increase in transit rates); proposed condition 35 (Section 271 continues to apply in current Qwest territory); 37 (Qwest PAP continues to apply for 4 years); proposed condition 40 (Qwest's current Change Management process will be continued, and Pending CLEC Change Requests will be completed in a commercially reasonable time frame).

<sup>58</sup> Joint Commenters' Comments at 42-46.

including from much larger carriers, that will discipline its pricing and market conduct.”<sup>59</sup> Applicants offer only one commitment, keeping wholesale support systems in place for 12 months.<sup>60</sup> Applicants’ position that conditions regarding their wholesale service are unnecessary because of competition from other carriers completely misses the point that Applicants control virtually all last-mile facilities within their territories. Their reference to “larger carriers” must be to AT&T and Verizon, which will be the only “larger carriers” in the United States after the merger. But the vast majority of end users in Applicants’ territories are not served by last-mile facilities of either AT&T or Verizon, nor are AT&T and Verizon obliged to unbundle those facilities that they do have. From the perspective of Applicants’ wholesale customers, Applicants are the “only game in town” within Applicants’ territory.

The Gates Direct Testimony provides additional bases for the condition duration proposed by Joint Commenters. As Mr. Gates pointed out, a 42-month minimum duration is appropriate, given Applicants’ representation of a 3-5 year synergy period, because “during the time period when the Merged Company is making merger-related changes to achieve synergies, customers and competition should be protected from harm resulting from those changes.”<sup>61</sup> Mr. Gates also pointed out that the FCC imposed a 42-month duration on the AT&T/BellSouth merger conditions, which like this merger, involved the acquisition of a BOC, raising more serious concerns not present in non-BOC acquisitions, and thus warranting additional protections.<sup>62</sup> Unlike AT&T, whose management already had experience operating a BOC, and merging with and integrating the operations of a BOC, CenturyLink’s management has never operated or merged with a BOC, thus warranting a longer duration for merger conditions.<sup>63</sup>

## V. Discovery

In an ex parte filed September 17, 2010, Integra Telecom, Inc. and tw telecom inc. requested that the Wireline Competition Bureau submit information

<sup>59</sup> Applicants’ Reply Comments at 34.

<sup>60</sup> *Id.*

<sup>61</sup> Gates Direct Testimony at 112-13.

<sup>62</sup> *Id.* at 113-14.

<sup>63</sup> *Id.* at 113-15.

requests as to the Applicants' integration plans and history. The proposed discovery requests sought to remedy the same concerns expressed by Joint Commenters' July 12, 2010 Comments that the Application contained no information at all about Applicants' plans with respect to integrating wholesale OSS, an issue that is critically important to CLECs. In general, the requested discovery sought to secure from the Joint Applicants information that would provide information regarding the comparative functionality of EASE to the existing Qwest OSS.

On October 18, 2010, the Wireline Competition Bureau issued discovery requests to Joint Applicants, asking for some of the OSS information requested by Integra and tw telecom. PAETEC is concerned that Joint Applicants will be able to answer the questions posed by the Wireline Competition Bureau without directly addressing one of the primary concern of CLECs – will elimination of Qwest OSS in favor of the EASE OSS at some point in the future result in an OSS that is materially less functional than the Qwest OSS that passed muster for 271 purposes?

Given the information that PAETEC and other CLECs have already placed in the record already demonstrates that EASE is significantly less functional than the Qwest OSS, perhaps there is no need for requesting such comparative since a strong condition is already warranted based on what is already known. However, the limited discovery already issued by the Bureau may, unfortunately, send an incorrect signal that the FCC is not concerned that the Merged Entity maintain a 271 compliant OSS going forward. Given that witnesses of Joint Applicants have testified in various state proceedings that a 271 compliant OSS is not an ongoing requirement of the 96 Act (a proposition with which PAETEC strenuously disagrees), an incorrect signal by the Commission may embolden Joint Applicants to make OSS changes that do degrade the functionality, leading to bigger problems in the future if the Commission, is not in fact, in agreement with the Joint Applicants regarding the ongoing need for a 271 compliant OSS. PAETEC therefore suggests that the Wireline Competition Bureau propound the remaining discovery questions regarding OSS submitted by Integra and tw telecom.

#### **V. Absence of Public Benefits**

The Joint Commenter Comments established (at pages 32-42) that Applicants had failed to show any demonstrable and verifiable public benefits that are "likely to be accomplished as a result of the merger but unlikely to be realized

by other means.”<sup>64</sup> In their Reply Comments, Applicants reiterate their claims that the merger will facilitate the development of broadband and advanced services, benefit consumers with increased scale and scope, and facilitate the Merged Company’s commitment to rural communities,<sup>65</sup> but fail to demonstrate that these will occur if and only if the merger takes place.

Apart from Applicants’ failure to rebut the arguments of the Joint Commenters that these were not demonstrable and verifiable public benefits that are likely to be accomplished as a result of the merger but unlikely to be realized by other means, Applicants’ discovery responses in state proceedings in which discovery has taken place show that Applicants have been unable to support these claims. As shown in the Minnesota Direct testimony of Dr. August Ankum, the alleged benefits are not “verifiable” because Applicants have been unable to offer evidence to support anything more than “unsupported predictions about what may transpire in the distant future.”<sup>66</sup> Dr. Ankum appended a chart to his Direct Testimony analyzing each of Applicants’ claims of public benefits by comparing Applicants’ assertions of public benefits with their discovery responses. Dr. Ankum’s comparison demonstrates that Applicants were unable to show their claimed benefits were verifiable and unlikely to occur but for the merger.<sup>67</sup> Moreover, Dr. Ankum showed that in several recent prior mergers in which cost-saving synergies were claimed as a public benefit, the synergies did not develop as predicted.<sup>68</sup>

### Conclusion

For the reasons set forth above, as well as in the Joint Commenter Comments, PAETEC respectfully requests that the Commission condition approval of the merger on the basis of the conditions requested in this letter and in the Joint Commenter Comments.

<sup>64</sup> *CenturyTel/Embarq Merger order*, ¶ 35, citing *AT&T/BellSouth Merger Order*, ¶ 202.

<sup>65</sup> Applicants’ Reply Comments at 2-9.

<sup>66</sup> Ankum Direct Testimony at 59; *see id.* at 57-60.

<sup>67</sup> Ankum Direct Testimony at Exhibit AHA-4.

<sup>68</sup> Ankum Direct Testimony at 32-37.

Ms. Marlene H. Dortch, Secretary  
October 22, 2010  
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Sincerely yours,

*/s/ electronically signed*

Eric J. Branfman

EXHIBIT

WAH-2



**Qwest - Operation Support System (OSS) Production Support****CenturyLink / Embarg - Comparable System/Application - Unknown**

<p>This is a helpdesk support function for all the OSS applications and systems. Usually accessed via phone call, so <i>Real Time</i>.</p>	<p><b>EASE-SQL</b></p>	<p><b>EASE-Electronic Interface</b></p>	<p><b>CTL/Embarg Unknown Application</b></p>
<p><b>Description:</b> Information about Event and Systems Notifications &amp; Process, the latest Events that may be occurring, Systems Notifications, how to escalate technical issues, and other Wholesale Systems Help Desk related information</p>			<p>Notes, comments, clarifications about CTL/Embarg system/application regarding the corresponding function noted in the Qwest column</p>
<p><b>Availability:</b> AZ, CO, IA, ID, MN, MT, NE, NM, ND, OR, SD, UT, WA, WY</p>			
<p><b>Login Requirements</b> Digital Certificate Requirements to access Userid/Password Administrator to manage company users</p>			
<p><b>Functions:</b> Event Notifications -Outages of all Qwest Systems impacting CLECS System Notifications - Current and future OSS functionality changes that affect CLECS Technical Escalation Process -This process defines how technical issues may be escalated by representatives from Qwest or the CLECs. It provides for assignment of escalated issues to designated Escalation Management Contacts. This process addresses escalations of technical issues associated with Wholesale Systems business functionality. Representatives of Qwest or the CLECs may request escalations. The process covers activities beginning with an escalation request and ending with escalation termination - Download Technical Escalation Contact List - Download Qwest and Competitive Local Exchange Carrier (CLEC) escalation of Technical Issue Process LFACS AN Conversion Schedule Support Information Downloads Download Instructions for subscribing to Qwest System Event Notification. Download CMP approved Notification Intervals and Severity Levels</p>		<p>Yes Yes Yes</p>	<p><b>Functions:</b></p>
		<p>No No No Unknown No</p>	<p>Information is available, but it is not available as a download. Information is available, but it is not available as a download. Information no available Information is available, but it is not available as a download. Information is available, but it is not available as a download.</p>
<p><b>Support:</b> Information Technologies Wholesale Systems Help Desk (IT-WSHD) The IT-WSHD supports CLECs that are in production who have questions regarding connectivity issues, outputs, and system outages. They do not support functional ("how to") questions concerning systems or applications. The IT-WSHD serves as your single and first point of contact. If the IT-WSHD is unable to assist you with a question, they will refer the information to the proper subject matter expert (SME) who will contact you directly or pass the resolution information to the IT-WSHD. The Help Desk professional will then call you to provide the information and confirm resolution.</p>		<p>Yes</p>	<p><b>Support:</b></p>

**CenturyLink - Electronic Administration & Service Order Exchange (EASE)**  
Virtual Front Office (VFO)

PAETEC (LM) system(s) are currently e-bonded directly with Qwest's systems via IMA-XML for LSRs. Real time.

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**Qwest - Interconnect Mediated Access (IMA)****CenturyLink - Electronic Administration & Service Order Exchange (EASE)  
Virtual Front Office (VFO)**

PAETEC (LM) system(s) are currently e-bonded directly with Qwest's systems via IMA-XML for LSRs. Real time.

	EASE- GUI LSR	EASE- Electronic Data Interface (EDI) LSR**	Notes, comments, clarifications about EASE regarding the corresponding function noted in the Qwest column. (LSRs are processed in batch rather than real time. The time interval is determined by mutual agreement of the parties.)
- IMA saves the address so that you can select it from a list of validated addresses on the LSR forms	Yes	No*	- The information has to be saved by The user in order to use on The order.
- The information may be previewed and emailed to the user	No	No*	- information may be printed
CSR- Customer Service Records	Yes	No*	CSR- Customer Service Records
The following lists the search options available			
- Partial or Full CSRs	No	No*	
- Virtual CSR - reflects any pending orders	No	No*	
- Listing, Billing and Service Equipment, Pending Order Tabs	No	No*	
- Previewed or emailed	No	No*	
- Retrieve CSR by Telephone Number or Circuit ID (ECCCKT)	No	No*	
Service Availability -- IMA Service Availability allows CLECs to confirm that products, services, and/or long distance carriers requested by your end-user are offered at the end-user's location and in Qwest's CO Switch.	No	No*	Service Availability is not a Pre-Order function. Rather, Service Availability is part of the Ordering function, so there are no means for LEC to identify necessary information, if anything, prior to ordering.
- Features, services, carriers (Pic) and which switches are available			
CFA Availability - can search for availability using the following methods/criteria:	Yes	No*	CFA Availability
- Check whether facilities to support them are available between the central office and the customer premise	Yes	No*	
- Designed and digital (HICAP) services	No	No*	
- Information may be previewed and emailed	No	No*	
Network Channel (NC)/Network Channel Interface (NCI) Codes Validation -- available for LSR via IMA GUI only	No	No*	
Billing Account Number (BAN) Validation -- available for LSR via IMA GUI only	Yes	No*	
IMA-GUI offers a list of BANs for each corporate identifier (known as RSID/ZCID). See IMA User Guide, p. 178 at <a href="http://www.qwest.com/wholesale/downloads/2010/100802/IMAUUG_280_080210.pdf">http://www.qwest.com/wholesale/downloads/2010/100802/IMAUUG_280_080210.pdf</a>			

**Qwest - Interconnect Mediated Access (IMA)****CenturyLink - Electronic Administration & Service Order Exchange (EASE)  
Virtual Front Office (VFO)**

PAETEC (LM) system(s) are currently e-bonded directly with Qwest's systems via IMA-XML for LSRs. Real time.

<u>EASE- GUI LSR</u>	<u>EASE- Electronic Data Interface (EDI) LSR**</u>	<u>Notes, comments, clarifications about EASE regarding the corresponding function noted in the Qwest column (LSRs are processed in batch rather than real time. The time interval is determined by mutual agreement of the parties.)</u>
Schedule Appointment -- The Schedule Appointment Function allows the CLEC to select the date and time to have a Qwest technician dispatched for premises or non-premises work.	No	No*
- Batch Hot Cut (BHC) - BHC process allows the migration of existing analog services (e.g., Resale) to unbundled local loops (2-wire or 4-wire analog voice grade) in a batch mode if the current facilities can be reused.	No	No*
Reserve Telephone Numbers -- IMA offers CLEC several options for requesting/reserving Telephone Numbers	Unknown	No*
- Select one or more of the TNs offered	No	No*
- Exchange the TNs offered	No	No*
- Reject the TNs offered	No	No*
Check Facility Availability	No	No
- Requested by address and/or TN	No	No*
- Pots Facility Request	No	No*
- # of Lines currently working at location	No	No*
- Dual service availability	No	No*
- Number of lines requested	No	No*
- Status - Available, Held	No	No*
- Whether a dispatch is required	No	No*
- Products not supported	No	No*
- Number of pending orders	No	No*
- Order Number for pending orders	No	No*
- Due date(s) for the pending orders	No	No*
Validate CFA	No	No*
View DLR -- This function is utilized by PAETEC (LM) for LSRs. PAETEC (LM) uses it for ASRs only --	n/a	No*

EASE-EDI: This function is available as an Order function for LSRs, but is not a Pre-Order function.

EASE-GUI: Reserving Telephone Numbers are not part of the Pre-Order function and, though reserving TNs appears to be available in EASE, it is unclear as to when or how to access this capability.

**Qwest - Interconnect Mediated Access (IMA)****CenturyLink - Electronic Administration & Service Order Exchange (EASE)  
Virtual Front Office (VFO)**

PAETEC (LM) system(s) are currently e-bonded directly with Qwest's systems via IMA-XML for LSRs. <u>Real time.</u>	EASE- GUI LSR	EASE- Electronic Data Interface (EDI) LSR**	Notes, comments, clarifications about EASE regarding the corresponding function noted in the Qwest column (LSRs are processed in batch rather than real time. The time interval is determined by mutual agreement of the parties.)
<b>Raw Loop Data</b> -- Refers to transmission path from the Qwest Central Office (CO) Distribution Frame, or equivalent, to the loop demarcation point at the end-user premises.	No	No*	
<b>Meet Point Query</b> -- allows you to validate details (e.g., end-user account information, facility and service availability, addresses, loop qualifications) prior to submitting service requests and avoids unnecessary errors and/or delays of your request.	No	No*	
<b>Loop Qualification</b> -- CLECs use the Loop Qualification option to <u>prequalify a requested circuit</u> . By making inquiries against the existing telephone number or service address, CLECs can determine whether it meets ADSL specifications and whether a loop qualifies for different types of xDSL service.	No	No*	Loop Qualification is <i>not</i> a <i>Pre-Order function</i> . Rather, it is part of the Ordering function, so there are no means for CLEC to identify what is available, if anything, prior to ordering.
<ul style="list-style-type: none"> <li>• Can obtain Loop Retrieval information by: Street Address, Telephone Number, Circuit ID (ECCCKT). And it identifies: <ul style="list-style-type: none"> <li>- Whether the loop is copper or pair gain</li> <li>- Whether there are bridged taps or load coils on the loop</li> <li>- Whether the loop should be moved to copper to be unbundled</li> </ul> </li> <li>• Loop Qualification for the following products used by PAETEC: <ul style="list-style-type: none"> <li>- Unbundled Asymmetric Digital Subscriber Line (ADSL)</li> </ul> </li> </ul>	No No No No	No* No* No* No*	
<b>Ordering</b> Auto-fill or Pre-Populate LSR - Customizes contact information for users by auto-populating data to the order	No	N/A	<b>Ordering</b> Re: EASE-GUI: If the data accessed prior to Ordering was not saved previously by user, then user must re-input data again. Any data gathered prior to Ordering must be saved
Post Order Responses to LEC system: These are <u>real-time</u> flow-through automatic responses to Orders between the Qwest and PAETEC (LM) systems - <u>real time</u> (responses returned within seconds). Below is a sampling of a list:	No	Yes - batch time only	EASE-GUI: PAETEC User must access EASE-GUI periodically to search and find response. System does not notify us or update our system when a response is available. EASE-EDI: These responses are provided in <u>batch</u> , and <i>not</i> real time.

**Qwest - Interconnect Mediated Access (IMA)****CenturyLink - Electronic Administration & Service Order Exchange (EASE)  
Virtual Front Office (VFO)**

PAETEC (LM) system(s) are currently e-bonded directly with Qwest's systems via IMA-XML for LSRs. Real time.

	<u>EASE- GUI LSR</u>	<u>EASE- Electronic Data Interface (EDI) LSR**</u>	Notes, comments, clarifications about EASE regarding the corresponding function noted in the Qwest column (LSRs are processed in batch rather than real time. The time interval is determined by mutual agreement of the parties.)
<b>ACK - Acknowledgement</b>	No	Yes - batch time only	EASE-GUI: PAETEC User must access EASE-GUI periodically to search and find response. System does not notify us or update our system. EASE-EDI: These responses are in batch, and not real time.
<b>FOC - Firm Order Confirmation</b>	No	Yes - batch time only	EASE-GUI: PAETEC User must access EASE-GUI periodically to search and find response. System does not notify us or update our system. EASE-EDI: These responses are in batch, and not real time.
<b>COM - Completion</b>	No	Yes - batch time only	EASE-GUI: PAETEC User must access EASE-GUI periodically to search and find response. System does not notify us or update our system. EASE-EDI: These responses are in batch, and not real time.
<b>BCN - Billing Completion Notification</b>	No	Yes - batch time only	EASE-GUI: PAETEC User must access EASE-GUI periodically to search and find response. System does not notify us or update our system. EASE-EDI: These responses are in batch, and not real time.
911/E911 Ordering - this service is available via e-bonding. However, Qwest uses a 3rd party vendor database, <u>Intrado</u> . <ul style="list-style-type: none"> <li>with this application, able to: <ul style="list-style-type: none"> <li>- perform inside searches by address</li> <li>- perform TN look-up for our PAETEC customers</li> </ul> </li> <li>Address discrepancies identified by Intrado are sent to CLEC through the Qwest Intrado application for investigation and resolution.</li> <li>Daily and Quarterly MSAG record updates provided through the Qwest Intrado database download.</li> </ul>	No	No*	EASE-GUI and EASE-EDI do not provide database and record updates via system downloads. Rather, CenturyLink will provide MSAG updates via email to designated contacts who must update our system separately. CLEC corrections to 911 or MSAG records are submitted manually via email to CenturyLink.
• CLEC corrections to 911 or MSAG records are submitted via the 911/E911 application.	No	No*	
<b>Ordering Types - of which PAETEC avails itself</b>	Yes	No*	<b>Ordering Types</b> Re EASE-EDI: Though the guide indicates that this is available, the Ordering function for these products have not been implemented yet.
- Unbundled Loops	Yes	Yes*	Re EASE-EDI: Though the guide indicates that this is available, the Ordering function for these products have not been implemented yet.
- Local Number Portability	Yes	No*	
- Loop with Number Port	Yes	Yes*	
- Directory Listing	Yes	Yes*	

**Qwest - Interconnect Mediated Access (IMA)****CenturyLink - Electronic Administration & Service Order Exchange (EASE)**  
**Virtual Front Office (VFO)**

PAETEC (LM) system(s) are currently e-bonded directly with Qwest's systems via IMA-XML for LSRs. Real time.

	EASE-GUI LSR	EASE-Electronic Data Interface (EDI) LSR**	Notes, comments, clarifications about EASE regarding the corresponding function noted in the Qwest column. (LSRs are processed in batch rather than real time. The time interval is determined by mutual agreement of the parties.)
- Resale POTS	Yes	No*	Re EASE-EDI: Though the guide indicates that this is available, the Ordering function for these products have not been implemented yet.
- Resale ISDN	Yes	No*	Re EASE-EDI: Though the guide indicates that this is available, the Ordering function for these products have not been implemented yet.
- Unbundled Analog Line Side Switch Port	No	No*	
- UNE-P ISDN BRI	No	No*	
- UNE-P PRI ISDN Facility	No	No*	
- UNE-P PRI ISDN Trunk	No	No*	
- EEL/UNE Combination	Yes	No*	Re EASE-EDI: Though the guide indicates that this is available, the Ordering function for these products have not been implemented yet.
- Resale Centrex	Yes	No*	Re EASE-EDI: Though the guide indicates that this is available, the Ordering function for these products have not been implemented yet.
<b>Order support</b>			
IMA-XML and IMA GUI Clean Order Edits <u>edits prior to submitting the order</u> which increases efficiency by reducing time, resources and costs	No	Yes*	Order support EASE-GUI: Error codes - available to CLEC <u>after the order has been submitted</u> and reviewed by EASE, which then requires a supp order to correct
Local Service Ordering Guidelines -LSOG	Yes	Yes*	LSOG 10 BRMS Custom Rules
Product and Services-PCAT	Yes	Yes*	LSOG10 BRMS Rules
Qwest E-Business -online Centrex Management Tools	No	No*	CenturyLink Standard Practices, though not as robust, appears to serve a similar purpose as the Qwest PCAT.
Wholesale Customer Contacts business procedure escalations	No	No*	
Wholesale Resources-IMA	No	No*	
Product Specific Job Aids - To numerous to list -- extensive details including business rules, step-by-step processes, etc.	Yes	Yes*	EASE-GUI: Have job aids, but not as robust as Qwest's. See below for some available. LSOG 10 Convert to LNP job Aid VFO New Install Job Aid VFO new loop Job Aid Pre-Qualification Order Entry Job Aid for order entry EASE-EDI: Have job aids, but not as robust as Qwest's
<b>Technical</b>			

**Qwest - Interconnect Mediated Access (IMA)****CenturyLink - Electronic Administration & Service Order Exchange (EASE)  
Virtual Front Office (VFO)**

PAETEC (LM) system(s) are currently e-bonded directly with Qwest's systems via IMA-XML for LSRs. Real time.

Connection Guide	EASE- GUI LSR	EASE- Electronic Data Interface (EDI) LSR**	Notes, comments, clarifications about EASE regarding the corresponding function noted in the Qwest column (LSRs are processed in batch rather than real time. The time interval is determined by mutual agreement of the parties.)
IMA XML Implementation Guidelines	No	Yes*	<u>EASE-EDI:</u> It is available, but on a limited basis, and it does not mirror production.
Upgrades 3X per year	No	No*	
- Combined CLEC Question and Answer Log for each upgrade	No	No*	
Stand Alone Testing Environment (SATE) for release Testing etc	No	YES*	
- SATE data Document			
- SATE Error List			
- Question and answer Log per each upgrade			
<b>Training</b>			
User Guide	Yes	Yes*	<b>Training</b>
Web-based training, self-paced	Yes	Yes*	
Instructor LED	No	No*	Web-based training still requires human interaction/coordination

\*\* PAETEC (not LM), through a 3rd party, is electronically-bonded for ASRs and LSRs. Regarding LSRs, EASE e-bonded system only processes port and DL orders.

No\* - LM is not electronically-bonded with CenturyLink, so a "No" indicates that there was no information available to conclude that EASE-EDI for LSR performed the function.

Yes\* - LM is not electronically-bonded with CenturyLink, so a "Yes" indicates that there was information available stating that EASE-EDI performed the function for LSRs.

Unknown\* - Based on the assumption that if EASE-GUI performs a function, the EASE-EDI will also perform the function. In the cases where EASE-GUI does not perform a function, and the information is unclear as to whether EASE-EDI performs the function, the "Unknown" response is entered.



**Qwest - Directory Listing Inquiry System (DLIS)**

PAETEC (LM) system(s) is currently e-bonded directly with Qwest system(s) via Directory Listing Inquiry System. Real time.

**CenturyLink - Electronic Administration & Service Order Exchange (EASE)  
Virtual Front Office (VFO)**

Description:	EASE- GUI LSR	EASE- Electronic Interface (FTP) LSR**	Notes, comments, clarifications about EASE regarding the corresponding function noted in the Qwest column (DLIS functions are accomplished via LSRs
<b>DLIS</b> uses the Qwest listing database to obtain directory listing information. The listing database retains directory listing data for Qwest, Independent Exchange Carriers, Competitive Local Exchange Carriers, and Enhanced Service Providers			<b>Directory Database</b> No specific database for directory only as DLIS -- Unable to find Directory DB. Unable to locate details about how to access Directory information - appears to be only available via the Customer Service Record.
<b>Availability:</b> AZ, CO, IA, ID, MN, MT, NE, NM, ND, OR, SD, UT, WA, WY			
<b>Login Requirements</b> Digital Certificate Requirements to access Userid/Password Administrator to manage company users			
<b>Electronic Access</b> Web Access -Application to Application (LM back-up) E-bonded - system to system direct connection Manual requests	No		<b>Electronic Access</b>
<b>Facility-Base Directory Listings (FBDL)</b> <b>Facility-Based CLEC Directory Listings</b> web page describes Qwest processes and business rules for working with CLECs to establish and maintain listing information within Qwest service areas.	Unknown		
<b>Pre-Order Search Options</b> Listing information may be accessed by: <ul style="list-style-type: none"> <li>Account Telephone Number</li> <li>Listed Telephone Number</li> <li>Non Standard Telephone Number</li> </ul>	No* No* No*	No* No* No*	<b>Pre-Order Search Options</b> T = Listings for telephone number

**Qwest - Directory Listing Inquiry System (DLIS)**

PAETEC (LM) system(s) is currently e-bonded directly with Qwest system(s) via Directory Listing Inquiry System. Real time.

**CenturyLink - Electronic Administration & Service Order Exchange (EASE)  
Virtual Front Office (VFO)**

	<b>EASE- GUI LSR</b>	<b>EASE- Electronic Interface (FTP) LSR**</b>	<b>Notes, comments, clarifications about EASE regarding the corresponding function noted in the Qwest column (DLIS functions are accomplished via LSRs</b>
<ul style="list-style-type: none"> <li>Service Access Code</li> <li>Straight Line Under (SLU) name</li> <li>Caption name</li> </ul> <p>When multiple matches are found, DLIS allows you to select one or more listings to be displayed. Using the Company Code will help you determine if you own the account/listing</p> <p><b>Listing Reconciliation Query:</b></p> <p>- Facility Based Listing auto-populate to the order</p>	<p>No*</p> <p>No*</p> <p>No*</p> <p>No*</p> <p>No*</p>	<p>No*</p> <p>No*</p> <p>No*</p> <p>No*</p> <p>No*</p>	
<b>Order support</b>			
Online help	Yes	Yes	
User Guides	Yes	Unknown	
Error Codes	Yes	Yes	
Error Message with Corrective Procedures	Yes	Unknown	
Matrix with Case Scenarios	No	No	
<b>Technical Support</b>			
Business Rule Differences for upgrades	No	No	
Pre-Order Error List	No	No	
Technical Specifications	Yes	Yes	
Schema examples	n/a	n/a	
<b>Training</b>			
User Guide	No	Unknown	Unable to locate a user guide for the GUI application
Instructor LED	No	Unknown	
Directory Listing Providers Business Procedures	No	Unknown	
On-Demand Verification Proof Request Forms	No	Unknown	

**Qwest - Directory Listing Inquiry System (DLIS)**

PAETEC (LM) system(s) is currently e-bonded directly with Qwest system(s) via Directory Listing Inquiry System. Real time.

**CenturyLink - Electronic Administration & Service Order Exchange (EASE)**  
**Virtual Front Office (VFO)**

<u>EASE-</u> <u>GUI LSR</u>	<u>EASE-</u> <u>Electronic</u> <u>Interface</u> <u>(FTP) LSR**</u>
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Notes, comments, clarifications about EASE regarding the corresponding function noted in the Qwest column (DLIS functions are accomplished via LSRs

**Qwest - Customer Electronic Maintenance and Repair (CEMR)****CenturyLink / Embarg - Comparable System/Application not available**

CEMR is a web-based GUI which is accessed application to application. <i>Real time.</i>	EASE- GUI	EASE- Electronic Interface **	CTL/Embarg System / Application	Notes, comments, clarifications about CTL/Embarg system/application regarding the corresponding function noted in the Qwest column
<b>Description:</b>  Is a web interface that allows you to interact with the Qwest Maintenance & Repair facilities and request service for trouble tickets. CEMR helps you manage trouble reports for both designed circuits and nondesignated circuits. It also provides prevalidation information that helps you prepare and manage those trouble reports.	n/a	n/a	No *	CTL/Embarg does not have a comparable system or application available.
<b>Availability:</b>  AZ, CO, IA, ID, MN, MT, NE, NM, ND, OR, SD, UT, WA, WY	n/a	n/a	n/a	
<b>Login Requirements</b>  Digital Certificate Requirements to access QORA Userid/Password Administrator to manage company users	n/a n/a n/a	n/a n/a n/a	n/a n/a n/a	
<b>Electronic Access</b>  Web Access -Application to Application Manual process	n/a n/a	n/a n/a	No * No *	<b>Electronic Access</b>
<b>Trouble Reports</b>				<b>Trouble Reports</b>
Trouble reports for designed circuits				
- view circuit history	n/a	n/a	No *	
- view DMARC information	n/a	n/a	No *	
<b>- Submit trouble reports for</b>				
- design circuits other than Broadband	n/a	n/a	No *	
- Broadband circuits	n/a	n/a	No *	
<b>- Follow up on design trouble first finding them and than</b>				
- editing	n/a	n/a	No *	
- canceling	n/a	n/a	No *	
- authorizing closure	n/a	n/a	No *	
- denying closure	n/a	n/a	No *	
- changing UBL appointments	n/a	n/a	No *	
<b>- Obtaining information on reports you've submitted by</b>				
- viewing ticket events	n/a	n/a	No *	
- viewing trouble report history	n/a	n/a	No *	
- checking the status of transactions	n/a	n/a	No *	

CEMR is a web-based GUI which is accessed application to application. Real time.

## Prevalidation information

**CenturyLink / Embarg** - Comparable System/Application not available

**Notes, comments, clarifications** about CTL/Embarq system/application regarding the corresponding function noted in the Qwest column

<div>View cable information</div> <div>- Search and verify cabling</div> <div>View carrier facility information</div> <div>- View Carrier Facility Assignment (CFA)</div> <div>View Design layout records (DLR)</div> <div>Check order status for design services</div> <div>-Circuit ID, order number, or Circuit layout number (CLO)</div> <div>- Project ID</div> <div>- Specific Trunk</div>	n/a	n/a	No *
<div>Trouble ticket support</div> <div>- Online Support</div> <div>- Descriptions on field names</div> <div>- Error messages with descriptive resolutions</div> <div>- Trouble types</div> <div>Circuit ID Format Guide</div> <div>- Status and Error Codes</div> <div>- Ticket Event States</div> <div>- Queued</div> <div>- Open/Active</div> <div>- Deferred</div> <div>- Cleared *</div> <div>- Closed **</div> <div>- Disabled</div>	n/a n/a n/a n/a n/a n/a n/a n/a n/a n/a n/a n/a n/a n/a n/a	n/a n/a n/a n/a n/a n/a n/a n/a n/a n/a n/a n/a n/a n/a n/a	No * No * No * No * No * No * No * No * No * No * No * No * No * No * No *
<div>Technical Support</div> <div>Business Rule Differences for upgrades</div> <div>Technical Specifications</div> <div>Schema examples</div>	n/a n/a n/a n/a	n/a n/a n/a n/a	n/a n/a n/a n/a

**Qwest - MEDIACC-EBTA**

PAETEC (LM) system(s) is currently e-bonded directly with Qwest system(s) via Electronic Bonded Trouble Application (EBTA).  
*Real time.*

**Description:**

MEDIACC-EBTA provides a common electronic gateway for Qwest Wholesale customers to communicate with various Qwest business applications.

**Availability:**

AZ, CO, IA, ID, MN, MT, NE, NM, ND, OR, SD, UT, WA, WY

**Login Requirements**

Digital Certificate Requirements to access  
User ID/Password  
Administrator to manage company users

**Electronic Access**

MEDIACC-EBTA GUI - Web Access -Application to Application  
EBTA -I Qwest and PAETEC (LM) systems are electronically bonded.  
Information is relayed in real time between the systems and companies.  
Manual process

**Function**

Electronic Bonding is realtime and secure electronic exchange of data between information systems in separate companies.  
Create Trouble Report (Enter Trouble Report)  
Request Trouble Report Status (GET)  
Add Trouble Information  
Modify Trouble Information  
Status Change Event Notification  
- Confirmation from Qwest when they receive any correspondence from LM  
- Provide status updates each time Qwest addresses the Trouble Ticket  
- Note whether billable charges are associated with Trouble Ticket  
Critical Attributes for Flow-Through  
Used to determine if the trouble report received achieves current flow-through

**Technical Support**

The MEDIACC/EBTA interoperability environment  
Testing Environment

**Centurmlink / Embarg - Comparable System/Application - Unknown**

<b>EASE-GUI</b>	<b>EASE- Electronic Interface **</b>	<b>CTL/Embarg Unknown Application</b>	
n/a	n/a	Yes*	<u>Embarg/CTL/Other System22:</u> The ability to create, modify, track and resolve trouble tickets is not done through EASE-EDI. However, based on information gathered from the CTL/Embarg website, <u>CTL appears to have a web interface that may perform some of the same functions.</u>
n/a	n/a	Unknown	<b>Login Requirements</b>
n/a	n/a	Unknown	
n/a	n/a	Unknown	
n/a	n/a	Unknown	<b>Electronic Access</b>
n/a	n/a	Unknown	
n/a	n/a	No*	
n/a	n/a	Unknown	<b>Function</b>
n/a	n/a	Unknown	
n/a	n/a	Unknown	
n/a	n/a	Unknown	
n/a	n/a	Unknown	
n/a	n/a	Unknown	
n/a	n/a	Unknown	
n/a	n/a	Unknown	
n/a	n/a	Unknown	
n/a	n/a	Unknown	
n/a	n/a	Unknown	<b>Technical Support</b>
n/a	n/a	Unknown	

**Centrex Management System (CMS)**

PAETEC (LM) is currently e-bonded directly with Qwest system(s) to achieve a CMS Application to application arrangement. Real time.

**CenturyLink / Embarg - Comparable System/Application not available**

<b>Description:</b>	<b>EASE-GUI</b>	<b>EASE-Electronic Interface **</b>	<b>CTL/Embarg System / Application</b>	<b>Notes, comments, clarifications about CTL/Embarg system/application regarding the corresponding function noted in the Qwest column</b>
Centrex Management System (CMS) allows you to exercise substantial control over your Centrex facilities and functions. CMS provides you with direct access to a mirror image of your central office-based service. Through a user-friendly web based graphical user interface (GUI), you may make changes quickly and easily to keep pace as your business changes. CMS enables you to add features, change parameters, expand calling groups, verify information and target features and functions to the most appropriate personnel	n/a	n/a	No	CTL/Embarg does not have a comparable system or application available.
<b>Availability:</b> AZ, CO, IA, ID, MN, MT, NE, NM, ND, OR, SD, UT, WA, WY	n/a	n/a	n/a	<b>Availability:</b>
<b>Electronic Access</b> CMS GUI -- Web Access -Application to Application CMS -- Qwest and PAETEC (LM) systems are electronically bonded. Information is relayed in <u>real time</u> between the systems and companies. Manual process	n/a	n/a	No	<b>Electronic Access</b>
<b>Functions:</b> Add features, change parameters, expand calling groups, verify information and target features and functions to the most appropriate personnel	n/a	n/a	No	<b>Functions:</b>



**Qwest - Qwest Online Request Application (QORA) Access Service Requests (ASRs)**

PAETEC (LM) system(s) is currently e-bonded directly with Qwest's system(s) to transmit ASRs. Real time.

**Function:**

QORA allows users to electronically submit ASRs for trunking, Local Interconnect Services (LIS), interstate and intrastate-switched access, and Private Line Transport Services (PLTS) offered for the origination and/or termination of inter-exchange traffic.

Qwest ASR Ordering follows the Access Service Ordering Guidelines (ASOG)

**Availability:**

AZ, CO, IA, ID, MN, MT, NE, NM, ND, OR, SD, UT, WA, WY

**Login Requirements**

Digital Certificate Requirements to access QORA

Userid/Password

Administrator to manage company users

**Electronic Access**

E-Bonded ASR - direct system to system connection.

QORA GUI - Web Access, Application to Application (LM uses for back-up) Manual Access

**Pre-Order transactions**

Location Inquiry Address Validation; address, Telephone number and/or circuit

CFA Validation

CLLI Scan-locate CLLI between two specific CLLI Codes

NC/NCI Validation

BAN Validation

**Order functions**

- Checking Request Status

- Revising a Rejected Request

**CenturyLink - Electronic Administration & Service Order Exchange (EASE) Virtual Front Office (VFO)**

**EASE-  
GUI ASR** **EASE-  
Electronic  
Interface  
ASR\*\***

Notes, comments, clarifications about EASE regarding the corresponding function noted in the Qwest column (ASRs are processed in batch rather than real time. The time interval is determined by mutual agrmt of the parties.)

n/a

Yes

Yes

n/a

Yes

Yes

**Login Requirements****Electronic Access**

Yes

Yes

Yes

Yes

**Pre-Order transactions**

Yes

Yes

Yes

Yes

Unknown

Yes

Unknown

No

Unknown

**Order functions**

Yes

Unknown

Yes

Unknown

Provides function, but unaware of the scope of information provided compared to the e-bond ASRs with Qwest

Provides function, but unaware of the scope of information provided compared to the e-bond ASRs with Qwest

**CenturyLink - Electronic Administration & Service Order Exchange (EASE)**  
Virtual Front Office (VFO)

PAETEC (LM) system(s) is currently e-bonded directly with Qwest's system(s) to transmit ASRs. Real time.

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**Qwest - Qwest Online Request Application (QORA) Access Service Requests (ASRs)**

PAETEC (LM) system(s) is currently e-bonded directly with Qwest's system(s) to transmit ASRs. Real time.

**CenturyLink - Electronic Administration & Service Order Exchange (EASE) Virtual Front Office (VFO)**

**EASE-** Electronic Interface **ASR\*\*** Notes, comments, clarifications about EASE regarding the corresponding function noted in the Qwest column (ASRs are processed in batch rather than real time. The time interval is determined by mutual agrmt of the parties.)

<b>Post-Order functions</b>		<b>Post-Order functions</b>
Reporting Tool- of submitted requests and order statuses-downloadable	No	Unknown
Search ASR requests for status	No	Unknown
ASR status summary	No	Unknown
Firm Order Confirmation	No	Unknown
View DLR information	No	Unknown
Clarification / Notification Request	No	Unknown
<b>Training</b>		<b>Training</b>
ASR User Guide	Yes	Yes
Instructor LED	No	No
Customer Administrators Guide	Yes	Yes
ASR Implementation Guidelines	Yes	Yes
<b>OSS Support</b>		<b>OSS Support</b>
ASOG Question Log	No	No
ASOG Frequently Asked question log	No	No
ICSC Codes	Unknown	Unknown
OSS Production Support -Event Notifications-Processes, Systems, Technical,	Yes	Yes
<b>Technical Support</b>		<b>Technical Support</b>
ICSC Codes Determination	Unknown	Unknown
Business Rule Differences from one upgrade to another	No	No
Pre-Order Error List	No	No
Technical Specifications	Yes	Yes
Transport Schema	No	No
Valid Spec Codes	Yes	Yes

**Qwest - Q.Pricer**

Q.Pricer is a web-based GUI which is accessed application to application. Real time.

**CenturyLink / Embarg - Comparable System/Application??** *appears not available*

Description	EASE-GUI	EASE-Electronic Interface **	CTL/Embarg System / Application	Notes, comments, clarifications about CTL/Embarg system/application regarding the corresponding function noted in the Qwest column
Q.Pricer allows customers to obtain and save a price quote for unregulated leased local access, unregulated private line services, unregulated Qwest local broadband services, Customer Provided Access (CPA) and regulated private line services.	n/a	n/a	No*	<u>Embarg/CTL Application??</u> : Based on our research of the CTL/Embarg website, there appear <i>not to be a comparable application available for this function, nor does it appear that this function is available</i> in an application.
<b>Availability:</b> AZ, CO, IA, ID, MN, MT, NE, NM, ND, OR, SD, UT, WA, WY	n/a	n/a	n/a	<b>Availability:</b>
<b>Electronic Access</b> Web Access -Application to Application	n/a	n/a	No*	<b>Electronic Access</b>
<b>Function:</b> Product Pricing	n/a	n/a	No*	<b>Function:</b>

**Qwest - Qwest Control (Qcontrol)****CenturyLink / Embarg - Comparable System/Application?? appears not available**

**Qwest Control** is a web-based GUI which is accessed application to application. Real time.

**Description:**

Qcontrol is a secure proprietary on-line and web-based application that provides instant access and management control over a broad range of Qwest National Wholesale Products and Services

**Availability:**

AZ, CO, IA, ID, MN, MT, NE, NM, ND, OR, SD, UT, WA, WY

**Login Requirements**

Self Service web portal  
User ID/Password

**Electronic Access**

Web Access -Application to Application

**Primary Function**

Pull resale invoices not received electronically  
Ordering and Billing

**Capabilities/Modules/Applications:****Home Module**

This module provides you access to QControl Products and Services, access to the Resource Center and a link to contact Qwest

**Toll Free Application**

View the inventory of Toll Free services associated to your QControl ID. In addition, you have the ability to reserve numbers, run utilization, configuration and summary reports, view and modify existing call plan routes, and access repair tickets for your Toll Free services.

**Data Application**

Allows you to manage your domestic Asynchronous Transfer Mode (ATM) and Frame Relay services associated to your QControl ID. Some of the features available under the Data product include access to inventory, the ability to request & view reports, check alarm status, view network maps, and view/create repair tickets.

**EASE-  
GUI** **EASE-  
Electronic  
Interface \*\*** **CTL/Embarg  
System /  
Application**

Notes, comments, clarifications about CTL/Embarg system/application regarding the corresponding function noted in the Qwest column

n/a n/a

No\*

Embarg/CTL Application??: Based on our research of the CTL/Embarg website, there appear *not to be a comparable application available for this function, nor does it appear that this function is available* in an application.

n/a n/a

n/a

**Login Requirements**

n/a n/a

n/a  
n/a**Electronic Access**

n/a n/a

No\*

**Primary Function**

n/a n/a

No\*  
No\***Capabilities/Modules/Applications:**

n/a n/a

No\*

n/a n/a

No\*

n/a n/a

No\*

**Dedicated Hosting (DH) Application**

Allows you to manage your DH services associated to your QControl ID. Some of the features available under the Hosting product include access to inventory, the ability to request and view reports and access to your account information through a Hosting Portal.

**Qwest IQ Net (DIA) Application**

allows you to manage your DIA (Dedicated Internet Access) services associated to your QControl ID. Some of the features available under the Qwest IQ Net product include access to inventory, the ability to request and view reports, configuration status and the ability to create and monitor repair tickets.

**Long Distance (LD) Application**

Allows you to view a listing of your LD inventory associated to your QControl ID. You also have the ability to filter and/or download your inventory and the ability to create and monitor repair tickets. In addition, the LD product application provides you the ability to view your Project Accounting Codes (PAC). Included in this application is your Dedicated Long Distance (LD) inventory. This application allows you to filter and download your inventory, as well as open repair tickets.

**eBilling Module**

Allows you to access your online bills (eBills), specify your delivery options, request and view a history of your charges and add more billing accounts to your QControl ID.

**IP Addressing**

Allows you to manage New IP Addressing, Return IP Addressing, Multiple Circuit IDs and SWIP (Shared Wholesale Project) abuse.

Allows you to manage New DNS, Modify Existing DNS, Reverse DNS, Delete DNS, and check for DNS availability.

**Routing**

Allows you to add or delete routing configurations for your network Configuration Requests

Allows you to track the status of your configuration requests

**Repair Module**

Allows you view or create tickets for your products and services that are associated to your QControl ID.

**Support**

User Guide  
Administrative User Guide

n/a	n/a	No*	Support
n/a	n/a	No*	
n/a	n/a	No*	
n/a	n/a	No*	
n/a	n/a	No*	
n/a	n/a	No*	
n/a	n/a	No*	

Qwest - Online Dispute Management (ODM)		CenturyLink / Embarg - Comparable System/Application - Unknown		
<b>Description:</b>  ODM is a common Web portal accessed via the Remote Control ordering system that allows Qwest Wholesale national customers to enter, submit, view, update, and cancel billing disputes.	<b>EASE-GUI</b>	<b>EASE-Electronic Interface **</b>	<b>CTL/Embarg, Unknown Application</b>	<b>Notes, comments, clarifications about CTL/Embarg system/application regarding the corresponding function noted in the Qwest column</b>
	n/a	n/a	Yes*	<b>Embarg/CTL/Other System??:</b> The ability to enter, submit, view, update, and cancel billing disputes is not done through EASE-EDI. However, based on information gathered from the CTL/Embarg website, <u>CTL appears to have an electronic interface for this process.</u>
<b>Availability:</b>  AZ, CO, IA, ID, MN, MT, NE, NM, ND, OR, SD, UT, WA, WY	n/a	n/a	Unknown	
<b>Electronic Access</b>  Web Access -Application to Application	n/a	n/a	Unknown	<b>Electronic Access</b>
<b>Functions:</b> Access the Create Dispute Module	n/a	n/a	Unknown	<b>Functions:</b>
Create a new dispute	n/a	n/a	Unknown	
Add attachment to a new dispute	n/a	n/a	Unknown	
Submit a new dispute and print confirmation	n/a	n/a	Unknown	
Download dispute lists	n/a	n/a	Unknown	
Display dispute history	n/a	n/a	Unknown	
View dispute details	n/a	n/a	Unknown	
Cancel a dispute	n/a	n/a	Unknown	
Print dispute lists	n/a	n/a	Unknown	
Dispute Types	n/a	n/a	Unknown	
<b>Support:</b>  Graph for quick links menu	n/a	n/a	Unknown	<b>Support:</b>
<b>Training</b> User Guide Online Training	n/a	n/a	Unknown	<b>Training</b>

# BINGHAM



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December 10, 2010

**VIA ELECTRONIC FILING**

**EX PARTE**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

**Re: Applications Filed by Qwest Communications International  
Inc. and CenturyTel, Inc., d/b/a CenturyLink for Consent to  
Transfer of Control, WC Docket No. 10-110**

Dear Ms. Dortch:

PAETEC Holding Corp., on behalf of its operating subsidiaries, PAETEC Communications, Inc., US LEC, and McLeodUSA Telecommunications Services, L.L.C. (collectively "PAETEC"), submits this letter to address the abbreviated arguments raised in an ex parte letter submitted by CenturyLink, Inc. and Qwest Communications International Inc. (collectively "Applicants") on November 8, 2010. Applicants submitted their November 8 ex parte in response to an ex parte filed by PAETEC on October 22, 2010. This letter supplements comments filed on July 12, 2010, by PAETEC and 11 other CLECs ("Joint Commenter Comments") and PAETEC's October 22, 2010 ex parte.

When Century Tel proposed to merge with Embarq in 2008, it voluntarily agreed to migrate to the more advanced Embarq operational support systems ("OSS") on a company-wide basis to secure regulatory approval of the transaction. It was unquestioned that the Embarq OSS was more advanced than the antiquated systems and processes historically used by Century Tel in its much smaller exchanges in which Century Tel was only required to support significantly smaller volumes of wholesale ordering and repair activities. Although the Embarq OSS had not been vetted via third party testing, or formally sanctioned by the FCC as meeting Embarq's obligation to provide CLECs nondiscriminatory access to the ILEC's underlying OSS, CLECs were generally amenable to allowing CenturyLink to migrate to a better OSS offered by EASE. Indeed, advocating that CenturyLink should be required to offer a more robust OSS than EASE would have been rejected out of hand since neither ILEC by itself nor even on a combined basis were subject to 271 obligations as were the larger regional Bell Operating Companies.

Less than a year after that deal closed, CenturyLink announced plans to acquire Qwest, which also has its own OSS. However, unlike the Embarq OSS,

Boston  
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Hong Kong  
London  
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New York  
Orange County  
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the Qwest OSS had been (a) subjected to rigorous third party testing, (b) found by the FCC to provide CLECs nondiscriminatory access to the ILEC's back office systems and databases, and (c) found by the FCC to meet Qwest's 271 obligations. Yet, CenturyLink has utterly balked at offering the identical commitment to adopt the more advanced OSS on a company-wide basis that it offered less than two years prior, and has not even been willing to make the lesser commitment of *retaining* the more advanced OSS where it currently exists.

Initially, the Applicants responded to requests for an OSS commitment by claiming that decisions about future OSS had not yet been made.<sup>1</sup> When various parties identified limitations of the EASE system, CenturyLink challenged a limited number of claims, maintaining that EASE was comparably functional in several respects to the Qwest OSS. When PAETEC provided additional facts undercutting the Applicants' claims of comparable functionality and identifying additional limitations, the Applicants' primary response was to promote a settlement reached with one CLEC, rather than attempting to counter PAETEC's showing that EASE was an inferior OSS compared to that of Qwest.

In their November 8 ex parte, the Applicants characterize PAETEC's concerns about potential OSS degradation in Qwest areas as mere "conjecture." This reverses the burden of proof, which should be on Applicants to show that there will not be degradation. In light of Applicants' refusal to commit to retain Qwest's OSS and their repeated statements that they will not decide which of the Applicants' OSS to keep until after the merger closes, the burden should be on Applicants to show that if they decide to replace Qwest's OSS with CenturyLink's EASE, OSS degradation in Qwest territory will not result.

Even though the burden is not on PAETEC to show that EASE is inferior in important respects to Qwest's OSS, PAETEC believes that it can carry that burden. Applicants assert that PAETEC's claims about the inferiority of EASE are mere "speculation" because PAETEC has chosen not to e-bond with EASE.<sup>2</sup> Applicants' suggestion that its lack of e-bonding with EASE undermines PAETEC's claims that EASE is inferior is typical misdirection. The fact that PAETEC is not directly e-bonded with EASE does not mean, as implied by Applicants, that claims that EASE is an inferior OSS are mere speculation. PAETEC uses a third party provider which is e-bonded with EASE to submit

<sup>1</sup> Lack of certainty about what the OSS would be in the future did not stop CenturyTel from making a commitment when merging with Embarq.

<sup>2</sup> Applicants' 11-8-10 Ex parte at 2, n.4.

orders in various legacy Embargo exchanges. Attached as Exhibit A is a detailed schedule denoting the functionalities of the Qwest OSS used by PAETEC today, and the comparable functionalities (or lack thereof) offered by EASE today. PAETEC has verified the accuracy of the information set forth in Exhibit A regarding the functionality of EASE with its account representative of the third party service bureau that is e-bonded with EASE to submit orders on behalf of PAETEC.<sup>3</sup>

As Exhibit A details, Applicants' suggestion that EASE is comparably functional is factually inaccurate. The bulk of the functionality available in the Qwest OSS is non-existent in EASE *using e-bonding*; further not all functionality offered by the Qwest OSS is even available in EASE when accessing the EASE User Interface manually. For example, in PAETEC's July comments, PAETEC noted that the Qwest IMA provides real time order processing, whereas EASE does not. In their Reply Comments filed in August, the Applicants said that this claim was "false." However, as detailed in Exhibit A, EASE offers only "batch" order processing even when e-bonded, which is not real time order processing as in flow-through processing for LSRs. With respect to pre-order functions, EASE does not currently offer any pre-order functions for LSRs or ASRs. EASE address validation, which EASE claims is a pre-order function, is a selection offering *once an order is opened*. Furthermore, the Qwest IMA allows the pre-order function of address validation using various selection options as drop-down menus. EASE has no helpful guides to assist a CLEC so a CLEC is required to input the address exactly as it appears in the EASE system (*e.g.*, abbreviating directions, such as north and west, or street and avenue; spelling out numbers or using digits; etc) to get a match. Thus, if the customer does not provide its address as recorded in EASE, the CLEC will be unable to validate the customer's address. Additionally, the Qwest IMA saves the validated address so that it can automatically populate an LSR with the validated address. EASE offers no such functionality.

<sup>3</sup> Discovery responses provided by Integra confirm that it does not have the sophisticated back office functionality that PAETEC has and would not have the same concerns about EASE that PAETEC has. (Exhibit B). Instead, Integra uses manual processes to complete various steps in pre-order, order submission, trouble ticket management and billing that PAETEC has automated. Integra's reliance on manual processes means should future changes to the Merged Company OSS degrade the functionality, access and robustness of the e-bonding capabilities, that would not impact Integra to the degree that such changes could impact the automated processes used by PAETEC.

EASE also does not allow a CLEC to access to CenturyLink's Customer Service Records electronically, whereas the Qwest IMA does offer this functionality. Thus, while the Qwest OSS allows PAETEC to download CSR information directly into its back offices system for use in sales, order preparation, and establishing a customer's account in its various systems, EASE offers no such functionality.

The Qwest IMA also enables a CLEC to confirm on a pre-order basis that certain services and products are able to be offered at a prospect's address. In EASE, "service availability" is only ascertained *after* a CLEC has submitted an actual order. The lack of any pre-order functions in EASE means a CLEC is forced to incur the cost and time of submitting an actual order only to potentially learn that the CLEC cannot serve the customer's location.

The list of comparative functions lacking in EASE is extensive, as detailed in the attached Exhibit A. That Applicants would continue to argue that the functionality of EASE is comparable to the Qwest OSS is troubling in light of the vague language concerning promises of comparable functionality set forth in the Integra settlement.

In multiple state proceedings, Applicants have claimed that their OSS commitment as written in the settlement with Integra will protect the interests of PAETEC in retaining its ability to continue using its internal automation allowing 'flow-through' 'real time' processing of orders and data and trouble tickets. In particular, Applicants argue that since they commit to provide wholesale service quality that is not materially less than that provided prior to closing, including "functionality," CLECs such as PAETEC will be adequately protected by this commitment. Yet the language in the Integra settlement does not ensure that the systems will be able to interface/communicate with each other in a comparable manner and to the same degree as currently exists. As a result, there is no commitment that Applicants, by converting to EASE, will not render useless PAETEC's automation efficiencies. Applicants' commitment as written is too vague to be enforceable. Thus, it is not adequate without more specificity, and to date, Applicants have been unwilling to add more specificity to its commitment.

The vagueness of the current commitment is made all the more concerning given Applicants' repeated claims in this record (and in state proceedings) that EASE *is* comparably functional to the Qwest OSS today. Such claims have been made despite numerous shortcomings identified by CLECs, including Integra. If Applicants are willing to represent to this Commission that EASE is comparably functional to the Qwest OSS today, one must assume that the Merged Entity will make similar claims whenever it seeks to migrate away from the Qwest OSS in

Ms. Marlene H. Dortch, Secretary  
December 10, 2010  
Page 5

the future. Clearly, what Applicants view as comparable functionality to the Qwest OSS is miles apart from what CLECs view as comparable functionality.

Additionally, the Applicants' commitment as written does not specifically address that part of "functionality" that cannot be materially degraded is functionality of the automation of a CLEC's own back office systems enabled by the current Qwest OSS e-bonding capabilities and access to Qwest databases. If the Merged Entity migrates to a new OSS that does not allow PAETEC to retain the same level of its pre-order, order, trouble ticket maintenance automation and data and database updates, then the loss of functionality of such an OSS will severely hamper PAETEC's operations. The commitment regarding "functionality" as written is tied to the enabling Merged Entity's wholesale performance level to not be materially less than Qwest's performance today. While the Merged Entity's wholesale performance may not degrade due to an OSS change on its side of the transaction, if the e-bonding provided does not afford the same ability to retain the automation in its own systems, a CLEC's operations will be severely hampered by such changes.

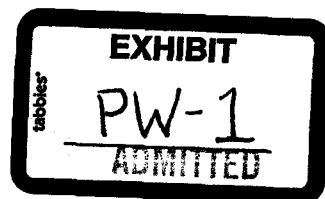
Moreover, the commitments in the Integra settlement mention nothing with respect to maintaining the functionality at the same cost to CLECs. Today, the Qwest OSS e-bonding allows PAETEC to download a variety of information, including databases. There is no separate charge for this functionality or download by Qwest. Even if the current commitment is clarified to ensure that CLECs will retain the ability to continue making database downloads into their own back office systems using the e-bonding capabilities, nothing in the commitment would prevent the Merged Entity from instituting substantial fees that render the access useless by making it financially prohibitive for a CLEC to access the data, revamp internal systems, processes, or both. Without such explicit protection, the efficiencies in automation in which CLECs have invested will be lost for a CLEC that has invested in automation of its own back office systems.

Please do not hesitate to contact me at (202) 373-6553 if you have any questions or concerns.

Very truly yours,

*s/ electronically signed*

Eric J. Branfman



**BEFORE THE ARIZONA CORPORATION COMMISSION**

**KRISTIN K. MAYES**

**Chair**

**GARY PIERCE**

**Commissioner**

**PAUL NEWMAN**

**Commissioner**

**SANDRA D. KENNEDY**

**Commissioner**

**BOB STUMP**

**Commissioner**

JOINT NOTICE AND APPLICATION OF	)	DOCKET NOS.	T-01051B-10-0194
QWEST CORPORATION, QWEST	)		T-02811B-10-0194
COMMUNICATIONS COMPANY, LLC, QWEST	)		T-04190A-10-0194
LD CORP., EMBARQ COMMUNICATIONS,	)		T-20443A-10-0194
INC. D/B/A CENTURY LINK	)		T-03555A-10-0194
COMMUNICATIONS, EMBARQ PAYPHONE	)		T-03902A-10-0194
SERVICES, INC. D/B/A CENTURYLINK, AND	)		
CENTURYTEL SOLUTIONS, LLC FOR	)		
APPROVAL OF THE PROPOSED MERGER OF	)		
THEIR PARENT CORPORATIONS QWEST	)		
COMMUNICATIONS INTERNATIONAL INC.	)		
AND CENTURYTEL, INC.	)		

**DIRECT TESTIMONY**

**OF**

**JAMES C. FALVEY**

**VICE PRESIDENT, REGULATORY AFFAIRS**

**& SENIOR COUNSEL**

**ON BEHALF OF**

**PAC-WEST TELECOMM, INC.**

**SEPTEMBER 27, 2010**

1   **Q.    PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS?**

2   **A.    My name is James C. Falvey. I am the Vice President, Regulatory Affairs & Senior**  
3       **Counsel for Pac-West Telecomm, Inc. My business address is 420 Chinquapin Round**  
4       **Rd. Ste. 1, Annapolis, MD 21401.**

5  
6   **Q.    ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?**

7   **A.    I am testifying on behalf of Pac-West Telecomm, Inc. ("Pac-West").**  
8

9   **Q.    PLEASE DESCRIBE YOUR POSITION AND DUTIES AT PAC-WEST.**

10  **A.    As the Vice President of Regulatory Affairs at Pac-West, I am responsible for all state**  
11       **and federal regulatory matters, including state and federal regulatory proceedings,**  
12       **resolving carrier disputes, compliance issues, policy development, industry and FCC**  
13       **relations, and state and federal legislative activity. My responsibilities include**  
14       **negotiating and securing approval of interconnection agreements between Pac-West and**  
15       **incumbent carriers in Pac-West service territories. Similarly, if a dispute arises under one**  
16       **of the Pac-West interconnection agreements or tariffs, I am responsible for resolving the**  
17       **dispute through negotiation or litigation.**

18  
19  **Q.    PLEASE DESCRIBE YOUR PROFESSIONAL BACKGROUND.**

20  **A.    From 1996 to present, I have represented competitive telecommunication providers on**  
21       **regulatory matters at the federal, state and local level. These carriers included CoreTel,**  
22       **espire Communications, Inc., Xspedius Communications, and Pac-West Telecomm, Inc.**  
23       **Prior to that, from 1994 to 1996, I represented a variety of competitive carriers in pre-**

1 Telecom Act state competition proceedings as an associate attorney with the law firm of  
2 Swidler & Berlin. From 1990 to 1994, I practiced general commercial and antitrust  
3 litigation with the Washington, D.C. office of Johnson & Gibbs. Before law school, I  
4 was a legislative assistant to Senator Harry Reid from 1985 to 1987. I hold a law degree  
5 from the University Of Virginia School Of Law and a Bachelor's of Arts from Cornell  
6 University. Over the last sixteen years, I have handled regulatory proceedings,  
7 interconnection agreement negotiations, intercarrier compensation disputes, and  
8 complaints at the state and federal level for competitive carriers. I have testified on  
9 behalf of competitive carriers on interconnection, unbundling, resale, and intercarrier  
10 compensation issues before fifteen public service commissions.

11  
12 **Q. PLEASE DESCRIBE YOUR BACKGROUND WITH INTERCONNECTION**  
13 **NEGOTIATIONS AND ARBITRATIONS.**

14 **A.** I have participated in state and federal interconnection proceedings since 1995, including  
15 pre-Act proceedings in Pennsylvania and Florida. Over the last fifteen years, I have  
16 negotiated interconnection agreements with BellSouth, GTE, Verizon, Southwestern Bell,  
17 Valor, and Qwest. I have also testified as a witness in Section 251/252 arbitrations in  
18 over ten states. In addition, I have attempted to port interconnection agreements from  
19 one AT&T state to another under the AT&T Merger requirements.

20  
21 **Q. PLEASE DESCRIBE THE TYPE OF SERVICES PROVIDED BY PAC-WEST.**

22 **A.** Pac-West is a competitive local exchange carrier ("CLEC") focused, for the last thirty  
23 years, on providing wholesale communications infrastructure services for other CLECs,

1 wireless providers, interexchange carriers, VoIP providers, and Internet Service and other  
2 information service providers. Pac-West offers voice and data access, transport, and  
3 managed services. Pac-West's network is engineered for easy integration and  
4 connectivity of multiple communications services. Pac-West recently introduced its  
5 Telastic service, a hosted operating environment for telecom services that allows carriers  
6 and service providers to evolve their less efficient legacy telecom infrastructure into a  
7 scalable and cost-effective system. Telastic includes on-demand carrier-grade network  
8 infrastructure, streamlined operations management capabilities, and turnkey  
9 communications service applications with instant capacity.

10  
11 **Q. WHERE DOES PAC-WEST OPERATE?**

12 **A.** Pac-West has facilities in Qwest territory in Arizona, Colorado, Idaho, Oregon, Utah, and  
13 Washington. Pac-West also competes with CenturyLink in Nevada, and has operations in  
14 California and Texas. Pac-West also partners with other companies to provide services in  
15 over 30 states across the country.

16  
17 **Q. DOES PAC-WEST INTERCONNECT WITH QWEST AND CENTURYLINK?**

18 **A.** Yes, like most CLECs, Pac-West has to interconnect with Qwest to exchange traffic and  
19 must purchase services from Qwest, including special and switched access services.  
20 Qwest is the dominant incumbent local exchange carrier in Arizona and in the five  
21 additional states where Pac-West competes with Qwest. In addition, Pac-West is  
22 interconnected with and competes with CenturyLink in Nevada. Thus, Pac-West has  
23 experience with both companies. Because Pac-West is a wholesale customer and a



competitor of both Qwest and CenturyLink, we are acutely concerned that the company resulting from the merger of CenturyTel, Inc. and Qwest Communications International, Inc. (the "Merged Entity") will use its increased market power to discriminate against smaller CLECs like Pac-West. We are particularly concerned in those instances where Qwest and CenturyLink have not been willing to abide by state or federal orders and statutes.

**Q. WHAT IS PAC-WEST'S POSITION ON THE PROPOSED MERGER OF QWEST AND CENTURYLINK?**

**A.** Pac-West is concerned that the proposed merger will accelerate anticompetitive conduct by Qwest and, consequently, harm emerging competition. If competitors cannot compete due to lost wholesale inputs, longstanding disputes, unpaid invoices, and costly interconnection requirements, end-user consumers will see higher prices, reduced service quality, and fewer product options. Pac-West believes that the Arizona Commission can reduce the likelihood of competitive harm by adopting specific and straight-forward conditions as described further below. In addition, Pac-West supports the adoption of the conditions proposed by the Joint CLECs in conjunction with merger approval.

**I. INTERCONNECTION**

**Q. DOES PAC-WEST ANTICIPATE INTERCONNECTION AGREEMENT PROBLEMS WITH THE MERGED ENTITY?**

**A.** Yes. Pac-West has had great difficulty reaching agreement with Qwest on its most recent Interconnection Agreement ("ICA") in Arizona. On August 15, 2008, Pac-West asked to

1 opt into the XO Communications Services, Inc. ICA. Implementing this opt-in should  
2 have been a simple, straight-forward process. Instead, securing a new ICA has taken  
3 nearly two years of discussions, with Pac-West executing the new ICA on May 20, 2010,  
4 and Qwest filing the ICA on June 23, 2010. During the past two years, Pac-West has  
5 received no reciprocal compensation for terminating calls on its network from Qwest  
6 customers. Unlike some delays, which merely create uncertainty, this one had the added  
7 harm of depriving Pac-West of compensation for terminating Qwest customer traffic.  
8 This period of "no intercarrier compensation" was by agreement. Pac-West and Qwest  
9 resolved a billing dispute by amending the ICA to discontinue intercarrier compensation  
10 until a successor agreement could be executed. Pac-West never expected that it would  
11 take literally years to negotiate an ICA with Qwest. This delay was caused in large part  
12 by Qwest's insistence that Pac-West meet network location requirements imposed  
13 unilaterally by Qwest as a precondition to reciprocal compensation. Pac-West expects  
14 that the merger will draw resources away from Qwest wholesale operations and further  
15 reduce Qwest's ability, and incentive, to agree on timely interconnection arrangements.

16  
17 **Q. HOW CAN THE INTERCONNECTION NEGOTIATION PROCESS BE**  
18 **REFORMED TO PUT COMPETITORS ON EQUAL FOOTING WITH**  
19 **QWEST?**

20 **A.** First, a CLEC should be able to opt into an ICA in use by Qwest or CenturyLink with  
21 another CLEC in this state or elsewhere. The selected ICA would be effective upon filing  
22 (by the CLEC or Qwest) with any necessary revisions to follow *after* the ICA effective  
23 date. In other words, Qwest should be required to allow any requesting carrier to port an

1 existing interconnection agreement, without revision. The Merged Entity would be  
2 authorized to request an order modifying the agreement *after it is effective*, to the extent  
3 it is not technically feasible for the Merged Entity to comply with one or more provision  
4 of the agreement. This procedure would eliminate the sort of delay experienced by Pac-  
5 West over the past two years. This portable opt-in condition would continue for a period  
6 of five years following the closing date of this Merger ("Closing Date").  
7

8 **Q. WHAT WILL HAPPEN IF QWEST IS PERMITTED TO MAKE CHANGES TO**  
9 **THE AGREEMENT PRIOR TO THE PORTING AGREEMENT'S EFFECTIVE**  
10 **DATE?**

11 **A.** Based on Pac-West's experience with Qwest, this would create such significant delays in  
12 the ICA porting process that it would defeat the purpose of such a streamlined ICA  
13 porting condition. If Qwest is given the opportunity to redline any ported agreement, to  
14 delete portions that it determines are not acceptable, the result will be an extensive ICA  
15 porting proceeding to determine which of the redlines are justified and which are not. If  
16 porting an agreement requires a year-long proceeding to contest a series of 10 or 20  
17 issues, CLECs such as Pac-West will be faced with the same extended time frames and  
18 extensive costs associated with negotiating a new agreement. If the Merged Entity has  
19 issues with a ported ICA once it is filed, those issues can be addressed after the ICA is  
20 filed and effective. In that manner, the vast majority of the agreement will become  
21 effective, while any contested issues are worked out by the Commission, rather than  
22 holding the entire ICA hostage to disputes over a limited number of issues.  
23

1   **Q.   DOES PAC-WEST HAVE ANY OTHER INTERCONNECTION CONCERNS?**

2   **A.   Yes. Pac-West is concerned that the Merged Entity could decide to unilaterally terminate**  
3       **ICAs and force CLECs into costly negotiations or arbitrations after the Closing Date. To**  
4       **avert this possibility, Pac-West proposes that the Merged Entity be required to allow a**  
5       **competitive provider to choose to extend an existing ICA for a period of three years from**  
6       **the Closing Date. This condition would apply to ICAs with unexpired terms and ICAs in**  
7       **“evergreen” status. There are often times when an agreement is working well for a**  
8       **CLEC, but the CLEC is nonetheless forced to expend time and resources to renegotiate**  
9       **the agreement. Permitting the extension of interconnection agreements will provide**  
10      **CLECs with a period of stability and prevent the Merged Entity from taking advantage of**  
11      **its new market power by immediately seeking to renegotiate the rates, terms and**  
12      **conditions of those agreements.**

13  
14   **Q.   HAS THIS TYPE OF EXTENSION REQUIREMENT BEEN IMPOSED**  
15      **BEFORE?**

16   **A.   Yes. The FCC adopted a similar condition in the Verizon/Frontier Merger proceeding as**  
17      **a means to ensure stability and reduce the transaction costs associated with entering into**  
18      **new interconnection agreements. *Applications Filed by Frontier Communications Corp.***  
19      ***and Verizon Communications Inc. for Assignment or Transfer of Control*, Memorandum**  
20      **Opinion and Order, WC Docket No. 09-95; FCC 10-87, May 21, 2010, Appendix C, p.**  
21      **35, Condition 16 (one year). Across its six Qwest states, Pac-West has agreements that**  
22      **are at or near their expiration dates and this condition would make it much easier for Pac-**  
23      **West to carry on its business with the merged entity post-merger.**

1   **Q.    WHAT OBLIGATIONS WILL THE MERGED ENTITY HAVE WITH REGARD**  
2       **TO INTERCONNECTION?**

3   **A.    The Merged Entity, after the Closing Date, will remain the largest incumbent local**  
4       **exchange carrier ("ILEC") and the largest Bell Operating Company ("BOC") in Arizona.**  
5       **Pac-West is concerned that the Merged Entity may disclaim its obligations under sections**  
6       **251/252 and 271 of the Telecommunication Act because CenturyLink is not currently a**  
7       **BOC (271 obligations) or an ILEC (251/252 obligations) in Arizona. Pac-West**  
8       **recommends that, as a merger condition, the Commission prohibit the Merged Entity**  
9       **from arguing in Arizona that it is not an ILEC subject to sections 251/252 or a BOC**  
10      **subject to the 14-point competitive checklist found in section 271 of the**  
11      **Telecommunications Act.**

12  
13   **Q.    WHAT IS THE VALUE TO PAC-WEST OF SECTION 271 AND WHY ARE YOU**  
14      **CONCERNED THAT THE MERGED ENTITY MIGHT TRY TO AVOID THOSE**  
15      **OBLIGATIONS?**

16   **A.    The critical role of sections 251 and 252 are well known. But Section 271 also plays an**  
17      **integral role in ensuring that a Regional Bell Operating Company like Qwest continues to**  
18      **comply with the core unbundling, interconnection, and compensation provisions, among**  
19      **others, of the Telecommunications Act. Section 271 gives CLECs an opportunity to**  
20      **bring anticompetitive practices to the attention of the FCC and to ensure enforcement of**  
21      **key provisions of the Act, including Qwest's obligation post-merger to offer rates that**  
22      **meet the just and reasonable and nondiscriminatory standard for a wholesale offering**  
23      **pursuant to Section 271(c)(2)(B).**

1   **Q.    HOW ELSE MIGHT THE ICA NEGOTIATION PROCESS BE SIMPLIFIED?**

2   **A.    Much of the ICA turmoil experienced by Pac-West in the past three years resulted**  
3       directly from searching for an available “opt-in” ICA so as to avoid Qwest’s form  
4       contract which was heavily biased against CLEC interests. Pac-West’s preferred course  
5       would have been to use the Pac-West ICA as the starting point for negotiating a new  
6       agreement. Qwest, however, was consistently unwilling (and remains unwilling today) to  
7       use anything other than its standard form interconnection agreement  
8       (<http://www.qwest.com/wholesale/clecs/negotiations.html>). Pac-West requests that as of  
9       the Closing Date, the Merged Entity be required to permit a carrier to use its own existing  
10      interconnection agreement as the basis for negotiating a new or successor interconnection  
11      agreement. Allowing a CLEC to use its existing interconnection agreement as a starting  
12      point for negotiations would be another way to reduce the transaction costs associated  
13      with entering into a new interconnection agreement. CLECs are familiar with their own  
14      interconnection agreements and are not likely to face unexpected interpretations or  
15      consequences if the starting point is their own agreement.

16  
17   **II.   INTERCARRIER COMPENSATION FOR ISP-BOUND TRAFFIC**

18  
19   **Q.    WHAT SHOULD THE COMMISSION DO WITH RESPECT TO ISP-BOUND**  
20       **TRAFFIC COMPENSATION?**

21   **A.    As a condition of this merger, the Commission should prohibit Qwest from requiring that**  
22       carriers have a “local calling area” presence in order to be compensated for terminating a  
23       Qwest customer ISP-Bound call. Qwest’s argument -- that a “local calling area” presence  
24       is required – has been squarely rejected by the FCC since November 2008. CLECs need

1 not have a presence in the “local calling area” to be eligible for reciprocal compensation  
2 for ISP Bound traffic. Section 251(b)(5) of the Telecommunications Act imposes a duty  
3 on all LECs to “establish reciprocal compensation arrangements for the transport and  
4 termination of telecommunications.”<sup>1</sup> Since the FCC’s *Order on Mandamus* in  
5 November 2008, it has been clear that the term “telecommunications” under the Act is  
6 not “limited geographically (‘local,’ ‘intrastate,’ or ‘interstate’) or to particular  
7 services....”<sup>2</sup> In that Order, the FCC further explained that ISP-bound traffic was subject  
8 to Section 251(b)(5), and “that section 251(b)(5) is not limited only to the transport and  
9 termination of certain types of telecommunications traffic, such as local traffic.”<sup>3</sup> The  
10 D.C. Circuit, the court with jurisdiction to review this FCC decision, fully affirmed the  
11 FCC’s decision.<sup>4</sup> Pac-West’s initial complaint on the VNXX issue was filed with the  
12 Commission in July 2005, and Pac-West has now litigated this issue with Qwest in  
13 Arizona for in excess of five years. Yet despite the clear federal holding that a carrier  
14 such as Pac-West serving an ISP is entitled to be compensated for terminating another  
15 carrier’s traffic, Qwest persists in refusing to pay Pac-West, arguing that section  
16 251(b)(5) *is* somehow still limited to local traffic. This argument flatly contradicts the  
17 FCC’s and the D.C. Circuit’s orders concluding that there is no such local limit to section  
18 251(b)(5) traffic or to the obligation to compensate Pac-West for ISP-bound traffic.

19  
20 **Q. WHAT HAS QWEST DEMANDED WITH RESPECT TO ISP-BOUND TRAFFIC**

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<sup>1</sup> 47 U.S.C. § 251 (b)(5)

<sup>2</sup> *In the Matter of Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, FCC 08-262, ¶ 8 (rel. November 5, 2008) (“*ISP Mandamus Order*”).

<sup>3</sup> *ISP Mandamus Order* ¶ 8, ¶¶17-22.

<sup>4</sup> *Core Comm’ns, Inc. v. FCC*, 592 F.3d 139 (D.C. Cir. 2010).

1 A. Qwest has, for years, refused to pay Pac-West anything for what it has categorized as  
2 "VNXX" ISP-bound traffic. Even worse, CenturyLink, has demanded in its service  
3 territory that Pac-West pay originating access charges on such traffic. Both positions  
4 violate the FCC *ISP Mandamus Order*<sup>5</sup> and FCC regulations.<sup>6</sup> FCC orders and  
5 implementing regulations simply do not permit a "local" traffic pre-condition for ISP-  
6 bound traffic compensation.

7  
8 **Q. WHAT ARE THE DETAILS OF THE VNXX ISP-BOUND TRAFFIC DISPUTE?**

9 A. Pac-West provides service to a large number of ISPs and offers virtual NXX (VNXX)  
10 arrangements, which are locally dialed ISP-bound calls originated by a caller physically  
11 located outside the local calling area. These arrangements allow Pac-West's ISP  
12 customers to offer their competitive services over a broader service territory and help  
13 bring new competitive ISP alternatives to Arizona. In Arizona, Qwest has refused to  
14 compensate Pac-West for terminating Qwest customer traffic when Pac-West utilizes a  
15 VNXX arrangement for terminating the customer call. Pac-West has sought termination  
16 at the level set by the FCC in the *ISP Remand Order* for ISP-bound traffic --\$0.0007  
17 cents per minute -- which is a much lower rate than the rate ILECs bill for the  
18 termination of local traffic. It is also the lowest FCC-mandated rate for any type of  
19 traffic exchange. Yet Qwest continues to refuse to pay at that rate and continues to  
20 litigate. In July of 2005, when this litigation was initiated in Arizona by Pac-West,  
21 parties could have reasonably differed on what federal law required. In 2006, the  
22 Commission ordered Qwest to pay Pac-West for all ISP-Bound traffic -- including VNXX

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<sup>5</sup> *ISP Mandamus Order*, ¶ 8.

<sup>6</sup> 47 C.F.R. § 51.703(b).



1 traffic – based on the Pac-West/Qwest ICA amendment requiring compensation for ISP-  
2 bound traffic.<sup>7</sup> Since that time, the FCC has issued orders supporting the Commission’s  
3 conclusion that this traffic is compensable and rejecting the contrary conclusion that only  
4 local traffic is eligible for reciprocal compensation.  
5

6 **Q. WHAT HAS BEEN THE COURSE OF THE QWEST’S LITIGATION TO DATE?**

7 **A.** Qwest has been successful in extending the life of its challenge to the Arizona  
8 Commission’s VNXX orders, and is continuing to find ways to extend the life of the  
9 dispute. Although it is not necessary to provide great detail regarding the appeal process,  
10 it is worth noting that the case was initially filed in 2005, decided on by the Commission  
11 in 2006, appealed by Qwest to federal district court and remanded to the Commission by  
12 the district court in March of 2008. That decision was then appealed to the Ninth Circuit  
13 by Level 3 Communications, and again remanded to the Commission in 2010 as a “non-  
14 final order.” In the remand proceeding, Qwest has recommended a hearing to explore  
15 issues that are at best tangential to the core legal issues. It is very easy to see how Qwest  
16 could – with modest effort – cause the case to continue for four more years. This  
17 proceeding presents the perfect opportunity for the Commission to require that Qwest  
18 resolve several longstanding intercarrier compensation disputes and cease the endless  
19 litigation.  
20

21 **Q. WHAT IS THE IMPACT OF QWEST’S ONGOING INTRANSIGENCE ON THIS**  
22 **ISSUE?**

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<sup>7</sup> Pac-West v. Qwest, Decision No. 68820; Docket No. T-01051B-05-0495 and T-03693A-05-0495 (complaint filed on July 13, 2005).

1 A. Qwest's litigation over reciprocal compensation has had the dual effect of forcing Pac-  
2 West to provide services without compensation, while saddling Pac-West with the  
3 exposure associated with significant (albeit meritless) compensation claims. When  
4 Qwest lost this issue to Pac-West back in 2006, Qwest was required to make payment on  
5 past due reciprocal compensation invoices for ISP-bound traffic. However, in connection  
6 with its ongoing litigation, Qwest asserted a clawback claim, that if Qwest were to prevail  
7 ultimately in its ongoing litigation, Pac-West would be required to pay back  
8 approximately \$1M in payments made by Qwest in Arizona, for traffic exchanged prior  
9 to 2006. Qwest insisted that it obtain a written commitment to this clawback claim when  
10 Pac-West was exiting from bankruptcy, a special claim that few other participants in the  
11 proceeding required. Four years later, Qwest continues to assert this claim and Pac-West  
12 continues to carry this exposure on its books, despite the fact that the FCC rejected the  
13 basis for Qwest's claim in 2008. If not required to follow FCC rules and orders, Qwest  
14 could force Pac-West to carry this burden for another four years, simply by continuing to  
15 litigate.

16 Q. **IS THIS THE ONLY CLAWBACK CLAIM ASSERTED BY QWEST AND**  
17 **CENTURYLINK AGAINST PAC-WEST?**

18 A. No. In fact, there is an additional clawback claim of approximately \$2M on the same  
19 issue in Washington State, for a total of \$3M in claims by Qwest. In addition,  
20 CenturyLink has asserted a separate dispute on the same issue in Nevada, although  
21 CenturyLink takes the more aggressive position that originating access applies to VNXX  
22 traffic. Not only does CenturyLink not remit reciprocal compensation to Pac-West, but  
23 actually claims that Pac-West owes CenturyLink originating access charges for ISP-

1 bound traffic. The CenturyLink claim is for over \$4M, bringing the total VNXX claims  
2 by the two companies to over \$7M. Pac-West has, with respect to all of the claims,  
3 pointed out that the law was explained by the FCC as of November 2008, and that there is  
4 no legal gravamen for the disputes. But neither Qwest nor CenturyLink has been willing  
5 to recognize the FCC's *ISP Mandamus Order*, nor the D.C. Circuit decision affirming it.  
6 The strategy of each company has been to subject Pac-West to unwarranted exposure by  
7 extending the life of these claims through litigation.

8 **Q. ARE THERE OTHER REPERCUSSIONS OF QWEST'S INTRANSIGENCE?**

9 **A.** Yes. Since the establishment of Qwest's clawback claim, Pac-West agreed to exchange  
10 VNXX traffic at bill and keep under its prior interconnection agreement. This was an  
11 accommodation that Pac-West agreed to in order to carry on with its business. As  
12 discussed above, however, Qwest position on this issue – compensation for VNXX traffic  
13 – caused tremendous delay in executing a new ICA. Even when the agreement was  
14 executed, Qwest delayed a month before filing the agreement with the Commission. As a  
15 result, Pac-West has not been paid for Qwest customer calls, terminated on the Pac-West  
16 network, for literally years.

17 **Q. WHEN PAC-WEST BEGINS TO INVOICE QWEST UNDER THE NEW**  
18 **AGREEMENT, WILL THERE BE RESTRICTIONS ON ITS ABILITY TO**  
19 **INVOICE FOR VNXX TRAFFIC?**

20 **A.** Yes. Qwest continues to refuse to pay reciprocal compensation for VNXX traffic, unless  
21 CLECs agree to locate facilities in each local calling area, thereby "qualifying" for  
22 reciprocal compensation pursuant to Qwest's view that only local traffic is subject to  
23 reciprocal compensation. This "local only" Qwest requirement, however, has been

1 rejected by the FCC and the D.C. Circuit Court of Appeals. As the FCC has explained, it  
2 is irrelevant whether an ISP-bound call is called "local" or "non-local" from a local  
3 exchange carrier's standpoint. Yet, even when Pac-West begins billing again in Arizona,  
4 it will be saddled with this illegal limitation. In summary, the impact on Pac-West is  
5 threefold: 1) a burdensome clawback of over \$1M; 2) an overextended bill and keep  
6 arrangement under the prior agreement; and 3) an illegal and burdensome requirement to  
7 locate equipment in every local calling area, creating an artificial and inefficient network  
8 that has no basis in the law.

9  
10 **Q. HAS THIS ISSUE BEEN RESOLVED BY OTHER INCUMBENT LOCAL**  
11 **EXCHANGE CARRIERS OUTSIDE THE QWEST REGION?**

12 **A.** Yes. Unlike Qwest, which continues to dig its heels in on this issue, the issue of VNXX  
13 traffic has long since been resolved in other parts of the country. For years, BellSouth  
14 has made a 9-state agreement available throughout the BellSouth region that allows for  
15 LATA-wide VFX at the \$0.0007 rate. Similarly, the issue has been resolved in  
16 California for several years, again, with payment for all ISP-bound traffic, including  
17 VNXX traffic at \$0.0007. AT&T has also offered a 13-state amendment in states ranging  
18 from Arkansas to Connecticut to Texas to Wisconsin that provides for VNXX in the same  
19 compensation range across a broad footprint. These agreements often require  
20 interconnection at each tandem, which itself is an onerous requirement. But these  
21 carriers have long since put this issue behind them, unlike Qwest, which is clinging to  
22 claims stemming from traffic exchanged nearly a decade ago, and will not come to terms  
23 on reasonable VNXX arrangements anywhere in its territory.

1   **Q.   WHY ADDRESS THIS ISSUE IN THE MERGER PROCEEDING?**

2   **A.   It was July 2005 when Pac-West filed a complaint with the Arizona Commission to**  
3       **recover reciprocal compensation payments owed by Qwest for ISP-Bound traffic. The**  
4       **Commission ruled in Pac-West's favor on June 29, 2006.<sup>8</sup> Qwest has not ceased**  
5       **litigating that dispute despite rulings by the FCC and the D.C. Circuit Court of Appeals**  
6       **clarifying that ISP-Bound traffic need not be local to be compensated. The Merged**  
7       **Entity may continue refusing to pay carriers the reciprocal compensation owed under**  
8       **federal law because to delay is to win if your adversary has fewer resources. Of**  
9       **particular concern to Pac-West is the fact that CenturyLink has taken an even more**  
10      **extreme position than Qwest, arguing in Nevada that originating access charges apply to**  
11      **VNXX traffic, despite the fact that the federal rules clearly preclude applying access**  
12      **charges to section 251(b)(5) traffic originated by a local exchange carrier.<sup>9</sup> The**  
13      **Commission should be concerned that the Merged Entity could go from bad to worse on**  
14      **this issue and take an even more aggressive position on intercarrier compensation owed**  
15      **to smaller carriers. The Merged Entity will have even greater pressure and leverage to**  
16      **drag out disputes where payment is otherwise required. Pac-West asks that the**  
17      **Commission resolve this issue before the merger is approved by instructing Qwest to**  
18      **abide by the FCC's rules and orders, and to make payment for all ISP-bound traffic,**  
19      **including VNXX traffic, at the reciprocal compensation rate without regard to the**  
20      **geographic reach of the call.**

21  
22   **III.   CONDITIONS PROPOSED BY JOINT CLECS**

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<sup>8</sup> ACC Decision No. 68820 (2006).

<sup>9</sup> 47 C.F.R. §51.703(b).

1   **Q.    DOES PAC-WEST ALSO SUPPORT THE CONDITIONS PROPOSED BY THE**  
2       **JOINT CLECS?**

3   **A.    Yes. Telephone carrier competition in Arizona is good for consumers, good for the**  
4       **State's economy, and critical for business growth in general. Competitors have a proven**  
5       **track record of providing new and innovative services, improved customer service and**  
6       **lower prices for consumers. With this in mind, the Commission promulgated the Arizona**  
7       **Competitive Telecommunications Services Rules in 1992. Arizona also welcomed**  
8       **competitors when the Telecommunication Act of 1996 opened the public switched**  
9       **telephone network to competition. The proposed acquisition of Qwest, by an**  
10      **independent local exchange carrier which serves mostly rural areas, threatens to**  
11      **undermine Arizona's substantial progress in promoting competition. For this reason,**  
12      **Pac-West supports the conditions proposed by the Joint CLECs. These conditions are**  
13      **designed to continue local competition in Arizona by preserving the systems and**  
14      **processes that already exist (e.g, OSS, QPAP, and arbitration process). In addition,**  
15      **many of the Joint CLEC conditions address concerns that are of critical importance to**  
16      **Pac-West, such as improved interconnection negotiation requirements. Without the Joint**  
17      **CLEC conditions, telecommunications competition in Arizona will be vulnerable.**

18  
19  
20   **Q.    PLEASE SUMMARIZE YOUR TESTIMONY**

21  
22   **A.    Neither Qwest nor CenturyLink have shared with competitors their post-merger plans for**  
23       **wholesale services. This is problematic. The Merged Entity could embrace its role as a**  
24       **wholesale provider, dismiss its appeals challenging carrier compensation awards, and**

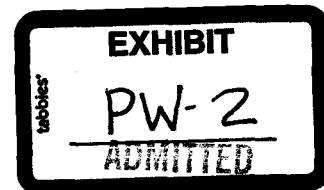
1 maintain and improve its wholesale systems. Alternatively, the Merged Entity could  
2 continue litigating lost cases, persist in withholding intercarrier compensation, and cease  
3 supporting its wholesale systems and operations. To avert this second scenario, Pac-West  
4 requests that the Arizona Commission impose the conditions identified above, as well as  
5 the conditions proposed by the Joint CLECs. Only by imposing conditions will the  
6 Commission ensure that Arizona remains a pro-competitive, innovative, and affordable  
7 state for competitive telecommunications.

8 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

9  
10 A. Yes.

11  
12  
13  
14 4843-8802-3815, v.

BEFORE THE ARIZONA CORPORATION COMMISSION  
RECEIVED



KRISTIN K. MAYES  
Chair

GARY PIERCE  
Commissioner

PAUL NEWMAN  
Commissioner

SANDRA D. KENNEDY  
Commissioner

BOB STUMP  
Commissioner


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ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

JOINT NOTICE AND APPLICATION OF	)	DOCKET NOS.	T-01051B-10-0194
QWEST CORPORATION, QWEST	)		T-02811B-10-0194
COMMUNICATIONS COMPANY, LLC, QWEST	)		T-04190A-10-0194
LD CORP., EMBARQ COMMUNICATIONS,	)		T-20443A-10-0194
INC. D/B/A CENTURY LINK	)		T-03555A-10-0194
COMMUNICATIONS, EMBARQ PAYPHONE	)		T-03902A-10-0194
SERVICES, INC. D/B/A CENTURYLINK, AND	)		
CENTURYTEL SOLUTIONS, LLC FOR	)		
APPROVAL OF THE PROPOSED MERGER OF	)	<b>PAC-WEST'S NOTICE OF FILING</b>	
THEIR PARENT CORPORATIONS QWEST	)	<b>REBUTTAL TESTIMONY</b>	
COMMUNICATIONS INTERNATIONAL INC.	)		
AND CENTURYTEL, INC.	)		

Pac-West Telecomm, Inc. ("Pac-West") hereby files the attached Rebuttal Testimony of  
James Falvey, Pac-West Vice President, Regulatory Affairs & Senior Counsel.

RESPECTFULLY SUBMITTED this 10<sup>th</sup> day of November 2010.

By   
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Original and 13 copies of the foregoing  
Filed this 10<sup>th</sup> day of November 2010 with  
Docket Control

Docket Control  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

COPIES of the foregoing mailed/emailed ("E.S.O." – electronic service only)  
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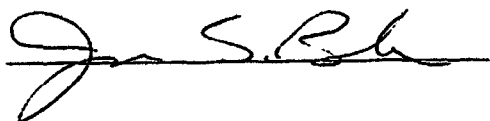
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**BEFORE THE ARIZONA CORPORATION COMMISSION**

**KRISTIN K. MAYES**

**Chair**

**GARY PIERCE**

**Commissioner**

**PAUL NEWMAN**

**Commissioner**

**SANDRA D. KENNEDY**

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CENTURYTEL SOLUTIONS, LLC FOR	)		
APPROVAL OF THE PROPOSED MERGER OF	)		
THEIR PARENT CORPORATIONS QWEST	)		
COMMUNICATIONS INTERNATIONAL INC.	)		
AND CENTURYTEL, INC.	)		

---

**REBUTTAL TESTIMONY**

**OF**

**JAMES C. FALVEY**

**VICE PRESIDENT, REGULATORY AFFAIRS**

**ON BEHALF OF**

**PAC-WEST TELECOMM, INC.**

**NOVEMBER 10, 2010**

1   **Q.    ARE YOU THE SAME JAMES C. FALVEY WHO FILED TESTIMONY IN THIS**  
2       **PROCEEDING ON BEHALF OF PAC-WEST DATED SEPTEMBER 27, 2010?**

3   **A.    Yes.**

4   **Q.    WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

5   **A.    The purpose of my rebuttal testimony is to respond to some of the testimony filed by the**  
6       **Commission Staff. Pac-West is encouraged by the fact that Commission Staff understand**  
7       **the importance of this proceeding and that Staff has recommended that the Commission**  
8       **exercise its clear authority to refuse to approve the merger absent certain critical**  
9       **procompetitive conditions. As part of my rebuttal testimony, I also suggest some**  
10      **constructive improvements to Staff's conditions. The merger will only be in the public**  
11      **interest if meaningful procompetitive conditions are imposed. In addition, I respond to the**  
12      **CenturyLink/Qwest witnesses, who suggest that the Commission does not have authority**  
13      **to refuse to approve the merger, or to impose conditions that would ensure that local**  
14      **competition is not extinguished by the larger, more entrenched Merged Company. If the**  
15      **Merged Company is allowed to continue to erect barriers to entry through protracted**  
16      **litigation, expensive interconnection disputes, nonpayment of bills, Arizona consumers**  
17      **will not receive the benefits of lower prices, innovative new services, and improved**  
18      **customer service. The conditions recommended by Pac-West, the Joint CLECs, and the**  
19      **Commission Staff provide a means to ensure that the Merged Company will adopt the**  
20      **best practices, rather than the worst practices, of CenturyLink and Qwest.**

1 **Q. WERE ALL OF THE CONDITIONS PROPOSED BY PAC-WEST AND THE**  
2 **JOINT CLECS ADDRESSED BY STAFF?**

3 A. No. Although Staff honed in on many of the critical issues, there are certain conditions,  
4 such as the ability to port interconnection agreements from other states, that Staff did not  
5 address in Direct Testimony. Although I will not review in this Rebuttal Testimony all  
6 the issues filed in my Direct Testimony, it will be critical for the Commission to parse  
7 through each of the conditions proposed by the CLECs in this proceeding, particularly in  
8 the area of interconnection which remains a fundamental requirement for effective CLEC  
9 competition.. Given the large number of grievances lodged by CLECs in this proceeding  
10 concerning their difficulties with both Qwest and CenturyLink, it is understandable that  
11 the Staff was not able to address all of the proposed conditions in their testimony.

12 **Q. WHICH OF THE CONDITIONS PROPOSED BY STAFF ARE MOST CRITICAL**  
13 **TO PAC-WEST?**

14 A. Conditions 31 and 47 are both of critical importance for Pac-West. With respect to  
15 Condition 31, the Staff has recommend that the Merged Company offer an ICA  
16 amendment that would provide for compensation for all VNXX traffic at the rate of  
17 \$0.0004. Although it appears Staff is intending to help resolve outstanding disputes, Pac-  
18 West currently has an arrangement in place in Arizona whereby it receives compensation  
19 at \$0.0007 for traffic delivered by Qwest for Pac-West to terminate on its network.

20 **Q. WOULD PAC-WEST BE WILLING TO ACCEPT A LOWER RATE IF IT**  
21 **HELPED LEAD TO A SETTLEMENT OF THE PARTIES DISPUTE?**

22 A. Yes. Pac-West filed its complaint in 2005, and the proceeding, already five years old,  
23 could well carry forward for another five years. To make matters worse, for the last two

1 years, Qwest has relied on legal arguments that fly in the face of both FCC and D.C.  
2 Circuit precedent. Although Pac-West firmly believes FCC orders are very clear that all  
3 ISP-bound traffic (including VNXX) must be compensated at \$0.0007, Pac-West would  
4 be willing to accept a rate of \$0.0005 for one year in order to close out the litigation. It is  
5 difficult for Pac-West to go below \$0.0007 because that rate in itself, is well below the  
6 Telecom Act's TELRIC rate as calculated by the Arizona Commission. However, Pac-  
7 West would be willing to agree to settle the currently pending litigation in exchange for a  
8 lower rate of compensation for a set period of time.

9 **Q. DOES PAC-WEST SUPPORT STAFF'S CONDITION 47?**

10 **A.** Pac-West supports the intent of Staff's Condition 47, but believes it should be  
11 strengthened to ensure that it effectively resolves the outstanding VNXX disputes.  
12 Condition 47 requires that the Merged Company evaluate existing litigation and make a  
13 good faith effort to resolve the issues without further litigation, specifically citing to the  
14 Pac-West/Level 3 VNXX Remand Proceeding. *See, e.g.,* Direct Testimony of Pamela J.  
15 Genung, at 35. The condition is a constructive step in the right direction because Qwest,  
16 to date, has *not* made a good faith effort to resolve the VNXX litigation with Pac-West.  
17 Pac-West made an offer to resolve the VNXX litigation in June 2010. In July 2010,  
18 Qwest declined to make a counteroffer. In the intervening four months, Qwest has made  
19 no counteroffer whatsoever, and has repeatedly and defiantly announced its intent to  
20 continue to litigate the matter to the bitter end. Of course, this type of extensive,  
21 expensive, and obstructive litigation is one of the most effective barriers to entry, and  
22 exceedingly harmful to competitive carrier growth in Arizona. As Staff has recognized,  
23 however, the Commission need not approve the Qwest CenturyLink merger if it finds

1 that the proposal is not in the public interest. Because the Commission has this authority,  
2 this is a critical juncture for the Commission to exert that leverage to put an end to  
3 Qwest's anticompetitive litigation.

4 **Q. DOES THE COMMISSION HAVE THE AUTHORITY TO REQUIRE QWEST**  
5 **TO SETTLE ITS OUTSTANDING LITIGATION?**

6 A. Yes, indirectly. The Commission has the authority to refuse to approve the merger. In  
7 fact, Staff has recommended that the merger Application be denied absent its conditions.  
8 *See, e.g., Fimbres Direct at 27.* If the VNXX dispute and other litigation create an  
9 unstable environment for Arizona CLECs, the Commission has the authority to defer its  
10 approval until the VNXX dispute and other cases are fully resolved. At that point, it  
11 becomes Qwest's choice whether to continue to litigate on its own, or to settle the cases  
12 sooner rather than later and pursue its merger with CenturyLink.

13 **Q. HOW COULD THE STAFF STRENGTHEN ITS MERGER CONDITION 47?**

14 A. Staff should consider simplifying the condition to say that the Merged Company shall  
15 evaluate existing litigation and settle or litigate to a final, nonappealable order such cases  
16 prior to Commission approval of the merger.

17 **Q. HAS QWEST AGREED IN ITS TESTIMONY TO RESOLVE THE ARIZONA**  
18 **VNXX LITIGATION?**

19 A. No. In fact, Qwest calls Staff's effort to resolve these issues in Condition 47  
20 "unacceptable and inappropriate." Campbell Rebuttal at 4.

1    **Q.    HOW DOES QWEST MISCONSTRUE THE CURRENT STATE OF**  
2       **NEGOTATIONS WITH PAC-WEST?**

3    A.    Remarkably, Qwest makes it sound like it is currently negotiating with Pac-West on the  
4       VNXX issue: "Qwest is generally willing to explore resolution outside of litigation, and  
5       remains willing to do so in these cases at every juncture." Campbell Rebuttal at 4.  
6       Qwest has not, to date responded to any of Pac-West's efforts to settle this litigation.  
7       Qwest also complains that there is no pressure on Pac-West to settle and that Commission  
8       Staff should not make only "one side of a dispute show 'good faith' . . . ." Id. But the  
9       Staff is right on target with its conditions. Pac-West does not need pressure to settle  
10      because Pac-West is already at the bargaining table. It is in fact Qwest that has refused to  
11      talk settlement. Most recently, Qwest called for a full factual hearing which would  
12      further extend the litigation, despite the fact that a proceeding on the briefs, as advocated  
13      by Pac-West, would be sufficient. Moreover, Pac-West has great incentive to settle  
14      because Qwest persists in holding onto its claim that VNXX compensation duly paid to  
15      Pac-West pursuant to a Commission order, must someday be repaid. In light of Qwest's  
16      ongoing intransigence and obfuscation, Pac-West asks the Commission to impose a firm  
17      condition that requires that ongoing litigation be fully resolved prior to merger approval.

18   **Q.    DO QWEST AND CENTURYLINK RECOGNIZE THE COMMISSION'S**  
19       **AUTHORITY TO DENY THE APPLICATION, OR IMPOSE CONDITIONS ON**  
20       **THE MERGER?**

21   A.    Presumably they do. But both companies have filed testimony that reflects a very limited  
22       view of the Commission's authority to impose conditions. For example, Mr. Hunsucker  
23       takes the extreme position that it is inappropriate for the Commission to impose a



1 condition relating to a matter that is in litigation. Hunsucker Rebuttal at 36, fn. 23. Yet  
2 many critical roadblocks that Qwest has thrown up are going to lead to litigation. In fact,  
3 carving out the entire universe of litigated issues serves to insulate Qwest from review of  
4 some of its most egregious disputes. The Commission should not adopt this limited view  
5 of its own authority.

6 **Q. IN WHAT OTHER WAYS DOES CENTURYLINK VIEW THE COMMISSION'S**  
7 **AUTHORITY TO BE LIMITED?**

8 A. CenturyLink appears to take the position that, if it is not already required by law, then it  
9 cannot be a condition to the Commission's approval of the merger. Mr. Hunsucker, who  
10 does not hold himself out to be an attorney, suggests that, *inter alia*, Section 252(e) of the  
11 Telecom Act precludes the Commission from requiring an ICA amendment as a merger  
12 condition. Yet the FCC, well versed in the details of the Telecom Act, in the BellSouth –  
13 AT&T merger, approved a merger which included ICA extensions, ICA negotiating  
14 templates, and procompetitive porting requirements that are not technically required by the  
15 four corners of the Telecom Act. Hunsucker Rebuttal at 30. Again, if the Commission  
16 deems that the merger without certain procompetitive conditions would be contrary to the  
17 public interest, it is fully within the Commission's authority to deny the application or  
18 impose conditions upon its approval. Given Pac-West's recent experiences with Qwest  
19 delays in negotiating and filing interconnection amendments, it is critical to the  
20 continuing development of competition in Arizona that the ICA-related conditions  
21 proposed by Pac-West and the Joint CLECs be required if the merger is to be approved.

1   **Q.   DO YOU AGREE WITH MR. HUNSUCKER THAT THE ICA PORTING**  
2       **CONDITIONS ARE ALSO BEYOND THE COMMISSION'S AUTHORITY?**

3   **A.   No.  Again, Mr. Hunsucker adopts a very limited view of the Commission's authority.**  
4       **Where Qwest or CenturyLink have *already* implemented ICA arrangements in another**  
5       **state, and a CLEC finds that such procompetitive arrangements would assist its company**  
6       **in providing competitive services in Arizona, it is not unreasonable for the Merged**  
7       **Company to port the ICA and its arrangements to Arizona. CenturyLink has already**  
8       **begun to throw up roadblocks to this procompetitive condition.  See Hunsucker Rebuttal at**  
9       **44-45.  One concern raised is that the arrangements would not be "technically feasible."**  
10      **To begin with, it is unclear why an arrangement that would technically feasible in New**  
11      **Mexico, Nevada, Utah, or Colorado would not be technically feasible in Arizona.**  
12      **Moreover, Pac-West's condition allows the Merged Company to raise specific issues of**  
13      **"technical infeasibility" once the ported agreement is on file with the Commission.**  
14      **Nothing in Pac-West's proposal is contrary to 47 C.F.R. § 51.809 because the Merged**  
15      **Company would still have the ability to claim technical infeasibility.  The Commission**  
16      **should inquire as to why arrangements that work perfectly well in one state, cannot be**  
17      **made available by the Merged Company in Arizona.  In any event, issues of technical**  
18      **feasibility relating to one small aspect of a contract should not delay or preclude the**  
19      **Agreement from being ported to Arizona.  As for state specific terms, Pac-West's**  
20      **proposal also allows for state specific pricing to be incorporated into the agreement prior**  
21      **to filing.**

1   **Q.   DO YOU AGREE WITH MR. HUNSUCKER THAT THE PORTING**  
2       **CONDITION VIOLATES SECTION 251?**

3   A.   No, such a requirement would not violate federal law. Mr. Hunsucker claims that a  
4       porting requirement would violate Section 251. Hunsucker Rebuttal at 45. Again, given  
5       that FCC's approval of the BellSouth-AT&T merger -- which provided competitive  
6       carriers just such a porting option -- it clearly must not violate federal law. Moreover,  
7       when that provision was approved by the FCC, CLECs used the condition to port  
8       procompetitive agreements without the parade of horrors recited in Mr. Hunsucker's  
9       testimony. The Commission should include Pac-West's porting requirement to ensure  
10      that the merger does not only benefit the Merged Company, but also expands competitive  
11      alternatives in Arizona.

12   **Q.   IN YOUR VIEW, HAS QWEST'S BEHAVIOR TOWARDS PAC-WEST**  
13       **IMPROVED IN LIGHT OF THE PENDING MERGER APPLICATION?**

14   A.   No. In some cases, Qwest has taken more extreme positions than in the past. In my  
15       Direct Testimony, Pac-West complained of unpaid invoices with Qwest. Qwest's billing  
16       disputes have gotten worse in the last two months, and Qwest to date has not been willing  
17       to work through these issues with Pac-West.

18   **Q.   WHY IS STAFF'S MERGER CONDITION 25 AN IMPORTANT CONDITION**  
19       **FOR THE COMMISSION TO INCLUDE?**

20   A.   Staff's merger condition 25 -- a requirement that Qwest abide by all interconnection  
21       agreements and tariffed arrangements with CLECs -- would seem to be superfluous.  
22       Where Qwest exchange services in an ICA or purchase services from a CLEC tariff, one  
23       would expect that Qwest would make payment for those services. However, in recent

1 weeks, Qwest has increased its disputes and, in one recent instance, failed to make  
2 payment on over \$100,000 of *undisputed* access invoices.

3 **Q. HOW COULD QWEST NOT MAKE PAYMENT ON ACCESS INVOICES THAT**  
4 **WERE NOT DISPUTED?**

5 A. Qwest was reporting payment on Pac-West's June switched access invoice issued by Pac-  
6 West to Qwest. Qwest's payments were significantly delayed, and its payment report  
7 was not issued to Pac-West until four months later on October 8. Leaving the four-month  
8 delay aside, Pac-West's total invoice to Qwest for June was \$224,288.65. Qwest  
9 disputed \$123,429.30 on the June invoice, leaving a total of \$100,859.35 undisputed by  
10 Pac-West and to be remitted with the October report. However, instead of remitting the  
11 \$100,859.35, Qwest claimed that, in its unilateral view, it had *overpaid* on Pac-West's  
12 May invoice and, therefore, it would withhold the entire \$100,859.35. Qwest effectively  
13 took back over \$100,000 of payments that Qwest – but not Pac-West – believed were  
14 overpaid by Qwest on the May invoice. Pac-West raised this issue with Qwest attorneys  
15 on October 21 and 22. Almost three weeks have passed, and Qwest still has not remitted  
16 the undisputed payment due to Pac-West. This is just one example of Qwest's "my way  
17 or the highway" approach to its relationship with CLECs. Pac-West submits that the  
18 Commission should adopt Merger Condition 25, and make it clear that it applies to  
19 billing under Qwest tariffs and payment issues under CLEC tariffs. In addition, Pac-  
20 West requests that the Commission include this dispute as a Condition 47 dispute that  
21 must be resolved prior to the approval of the merger application.

22 **Q. DOES THAT CONCLUDE YOUR TESTIMONY?**

23 A. Yes, it does.